



A
DICTIONARY
OF
AMERICAN AND ENGLISH LAW,
WITH
DEFINITIONS OF THE TECHNICAL TERMS OF
THE CANON AND CIVIL LAWS.
ALSO, CONTAINING
A FULL COLLECTION OF LATIN MAXIMS,
AND CITATIONS OF UPWARDS OF FORTY THOUSAND REPORTED CASES,
IN WHICH WORDS AND PHRASES HAVE BEEN JUDICIALELY
DEFINED OR CONSTRUED.

VOL. I.

BY
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PREFACE.

In view of the fact that there are no less than three large two-volume law dictionaries now published in the United States, some explanation seems to be in order of the reasons deemed by us sufficient to justify the issue of a fourth work of this character.

While we have no desire to pass undue criticism upon any of these books, at least one of which has for many years been almost universally accepted as a standard authority, yet we have long been impressed by the actual fact that not one of them is, in the strict sense of the term, a "dictionary of the law." One of them is, for the most part, a mere glossary, containing much matter of interest to the antiquarian and philologist, but comparatively little of value to the practicing lawyer. Another, while it avoids this defect, contains a large amount of matter foreign to its avowed object, and properly belonging to the domain of the digest and works on court practice. The third is not open to either of these objections, but so many strictly legal terms are altogether omitted, and the attempt to embrace the definitions of words and phrases to be found in the reported cases, is so imperfectly carried out that this work has been severely criticised by one of the leading legal periodicals of the day.

In our judgment a practical law dictionary should contain the following features :

(1) Accurate and concise definitions and explanations of the technical words and terms of the common, civil, and canon law.

(2) As complete a list as possible of the Latin maxims upon which those systems are in a great measure founded, with correct English translations, and illustrations of their application.

(3) A reliable guide by which to ascertain in what manner, if at all, the judiciary have defined or construed words and phrases in ordinary use, into very many of which the law, urged on by the necessities of the case, has imported meanings more or less different from the vernacular sense.

It is believed that these three features will be found pretty fully developed in this work ; they have been constantly held in view during its preparation, and no expenditure either of labor or money has been spared to secure their presence.

Such merit as this work may possess in respect of the third essential feature above mentioned is due in a great degree to a very valuable and extensive collection of adjudged words and phrases, contained in five large manuscript volumes, contributed to the work from a work entitled "ADJUDGED WORDS AND PHRASES," prepared by John J. Brown, deceased, of Morristown, New Jersey, which was submitted to Chancellor Kent many years ago, whose opinion of it

will sufficiently appear from the letter printed below.* The original MS. of Brown's book is the property of the Misses Scofield, of Morristown, who allowed it to be used for this work under a contract. A copy of this, in the possession of Hon. Robert Gilchrist, ex-Attorney-General of New Jersey, was loaned to us, at their request, by him, he having originally called our attention to its worth. The value of these references (about thirty-five thousand in number) to the profession in the aggregate it would be difficult to estimate. The citations are entirely reliable, every one having been carefully verified.

With respect to the first feature (which we may call the dictionary proper) much assistance has been derived from a recently published English Law Dictionary by Charles Sweet, Esq.,† advance sheets of which have been furnished to us from time to time by special arrangement with the English publisher; and much valuable matter has also been gleaned from the older dictionaries, glossaries and lexicons, of Blount, Brown, Cowell, Jacob, Spelman, Tomlin, Wharton, Les Termes de la Ley, Bell's Scotch Dictionary, and many others. A strenuous effort has been made to produce the most correct and extensive repository of the accepted meanings of both modern and ancient law terms extant, and at the same time to trench as little as possible upon the domain of the glossary, confining all obsolete matter, by means of brevity of statement and the use of small type, within the narrowest practical limits.

The number of maxims included will be found to be the largest ever presented in a single work, and comprise all those contained in WHARTON'S LAW LEXICON, together with many others obtained from various sources original and derivative.

The thanks of the authors are due to the officers of the New York Law Institute, the Brooklyn Law Library, and the Jersey City Law Library, in which three institutions, by their kind permission, much of the labor here bestowed has been performed; and to Charles C. Black and James A. Gordon, Esqs., of Jersey City, for much valuable assistance in verifying the multitude of citations contained in the work.

S. R.

R. L. L.

NEW YORK, May 3d, 1883.

*

SUMMIT, August 17.

DEAR SIR:—I return by Mr. Sylve your MS. book on "Adjudged Words and Phrases" with my thanks. I have run over the book and I think it calculated to be very useful to the profession in the pursuit of law points and explanations. You have shown a vast deal of labor and research and I wish you may meet with sufficient encouragement for the publication of it, as I think it would be well received by the profession.

I am, with much respect, your obliged and obedient servant,

JAMES KENT.

JOHN R. BROWN, Esq.

† A DICTIONARY OF ENGLISH LAW, containing definitions of the technical terms in modern use, and a concise statement of the rules of law affecting the principal subjects, with historical and etymological notes. By CHARLES SWEET, LL.B., of Lincoln's Inn. LONDON: HENRY SWEET, 3 Chancery Lane, 1882.

A

TABLE OF ABBREVIATIONS

USED IN THE

CITATION OF LEGAL AUTHORITIES.

A.

- A.—Anonymous. *See* A.
- A. B.—Anonymous Reports at the end of Benloe's Reports, commonly called New Benloe.
- A. C.—Appeal Court, English Chancery.
- A. D.—*Anno Domini*; in the year of our Lord.
- A. K. Marsh., (Ky.)—A. K. Marshall's Kentucky Reports.
- A. P. B.—Ashurst's Paper Books; Manuscript paper books of Ashurst, J., and other Judges, in Lincoln's Inn Library.
- A. R.—*Anno Regni*; in the year of the reign.
- A. S.—Act of Sederunt.
- A. & D. High.—Angell & Duffree on Highways.
- A. & E.—*See* Ad. & E.; Adolph. & E.
- A. & F. Fixt.—*See* Amos & F. Fixt.
- Ab. or Abr.—Abridgment.
- Abb. Adm.—Abbott's Admiralty Reports.
- Abb. App. Dec., Abb. Ct. of App., or Abb. N. Y. Ct. of App.—Abbott's New York Court of Appeals Decisions.
- Abb. Corp. Dig.—Abbott's Digest Law of Corporations.
- Abb. For.—Abbott's Forms of Practice and Pleading.
- Abb. Law Dict.—Abbott's Law Dictionary.
- Abb. Leg. Rem.—Abbott's Legal Remembrancer.
- Abb. Nat. Dig.—Abbott's National Digest.
- Abb. N. Y. Dig.—Abbott's Digest of New York Reports and Statutes.
- Abb. (N. Y.) N. Cas.—Abbott's New Cases, New York Courts.
- Abb. (N. Y.) Pr. or Abb. Pr.—Abbott's New York Practice Reports.
- Abb. (N. Y.) Pr. N. S. or Abb. Pr. N. S.—Abbott's New York Practice Reports, New Series.
- Abb. Sh.—Abbott on Shipping.
- Abb. Tr. Ev.—Abbott's Trial Evidence.
- Abb. U. S.—Abbott's United States Reports.
- Abb. U. S. Pr.—Abbott's United States Courts Practice.
- Abb. Yearb. Jur.—Abbott's Year Book of Jurisprudence.
- Abd. & W. Inst.—Abdy & Walker's Institutes of Justinian.
- A'Beckett res. judg.—A'Beckett's Reserved Judgments.
- Abr. Cas. Eq.—Equity Cases Abridged.
- Abs.—Absolute.
- Acc.—*Accordant*. In the reports, denotes the agreement between one decided case and another in holding the same doctrine, in like manner as *contra* denotes the disagreement of cases.
- Act. or Act. Pr. C.—Acton's Prize Cases, English Privy Council.
- Act. Reg.—*Acta Regia*.
- Ad. Cont.—Addison on Contracts.
- Ad. E.—Adams on Ejectment.
- Ad. Eq.—Adams' Equity.
- Ad fin.—*Ad finem*; at the end.
- Ad. Torts—Addison on Torts.
- Ad. Tr.—Adams on Trademarks.
- Ad. & E.—Adolphus & Ellis' King's Bench Reports.
- Add. or Add. (Pa.)—Addison's Pennsylvania Reports.
- Add. Cont.—Addison on Contracts.
- Add. Eccl.—Addam's Ecclesiastical Reports
- Add. Torts—Addison on Torts.
- Adm.—Admiralty.
- Admr.—Administrator.
- Admx.—Administratrix.
- Adolph. & E.—Adolphus & Ellis' King's Bench Reports.
- Ads. or Ats.—At the suit of.
- Adye C. M.—Adye on Courts Martial.
- Agn. Pat.—Agnew on Patents.
- Agn. St. of F.—Agnew on the Statute of Frauds.
- Ahr. N. L.—Ahrens on Natural Law.
- Aik. (Vt.)—Aikens' Vermont Reports.
- Aird Civ. L.—Aird's Civil Law of France.
- Al.—*See* Aleyn.
- Al. & Nap.—Alcock & Napier's King's Bench and Exchequer Reports.
- Ala. or Ala. N. S.—Alabama; Alabama Supreme Court Reports.
- Ala. Sel. Cas.—Alabama Select Cases.
- Alb. L. J.—Albany Law Journal.
- Alc. Reg. Cas.—Alcock's Irish Registry Cases.
- Alc. & N.—Alcock & Napier's King's Bench and Exchequer Reports.
- Ald. Ind.—Alden's Index.
- Ald. Ques.—Aldred's Questions on Property Law.
- Ald. & Van H. Dig.—Alden & Van Hoesen's Digest of the Laws of Mississippi.
- Aldr. Hist.—Aldridge's History of the Courts of Law.
- Aleyn—Aleyn's King's Bench Reports.

- Alex. Ch. Pr.—Alexander's Chancery Practice.
 Alison P.—Alison's Practice of Criminal Law of Scotland.
 Alison Princ.—Alison's Principles of Criminal Law of Scotland.
 All. (Mass.) or Allen—Allen's Massachusetts Reports, Vols. 83-96, Mass.
 All. (N.B.) or Allen (N.B.)—Allen's New Brunswick Reports.
 All. & Morr. Tr.—Allen and Morris' Trial.
 All. Sher.—Allen on Sheriffs.
 All. Tel. Cas.—Allen's Telegraph Cases.
 Alleyne L. D. of M.—Alleyne's Legal Degrees of Marriage.
 Alln. Part.—Allnatt on Partition.
 Alln. Wills—Allnutt on the Practice of Wills.
 Am. or Amer.—America, American, *Americana*.
 Am. Ch. Dig.—American Chancery Digest.
 Am. Civ. L. J.—American Civil Law Journal.
 Am. Corp. Cas.—Withrow's American Corporation Cases.
 Am. Cr. Rep.—American Criminal Reports.
 Am. Dec.—American Decisions.
 Am. Dig.—American Digest.
 Am. Insolv. Rep.—American Insolvency Reports.
 Am. Jur.—American Jurist.
 Am. L. J.—American Law Journal.
 Am. L. J. N. S.—American Law Journal, New Series.
 Am. L. Mag.—American Law Magazine.
 Am. L. Rec.—American Law Record.
 Am. L. Reg.—American Law Register.
 Am. L. Rev.—American Law Review.
 Am. L. T. Rep.—American Law Times Reports.
 Am. Lead. Cas.—Hare & Wallace's American Leading Cases.
 Am. Pl. Ass.—American Pleaders Assistant.
 Am. Prob. Rep.—American Probate Reports.
 Am. Rep.—American Reports.
 Am. Ry. Cas.—American Railway Cases.
 Am. Ry. Rep.—American Railway Reports.
 Am. Tr. Cas.—Cox's American Trademark Cases.
 Amb.—Ambler's English Chancery Reports.
 Amos Code—Amos on an English Code.
 Amos Const.—Amos on the English Constitution.
 Amos Jur.—Amos on Jurisprudence.
 Amos Reg. V.—Amos on the Regulation of Vice.
 Amos Sc. L.—Amos' Science of Law.
 Amos & F. Fixt.—Amos & Ferard on Fixtures.
 An.—Anonymous.
 And.—Anderson's Common Pleas and Court of Wards Reports.
 Anders. Ch. W.—Anderson on Church Wardens.
 Andr.—Andrews' King's Bench Reports.
 Andr. Dig.—Andrews' Digest.
 Andr. Prec. L.—Andrews' Precedents of Leases.
 Andr. Prec. M.—Andrews' Precedents of Mortgages.
 Andr. Rev. L.—Andrews on Revenue Laws.
 Ang. Adv. Enj.—Angell on Adverse Enjoyment.
 Ang. Ass.—Angell on Assignments for Creditors.
 Ang. B. T.—Angell on Bank Tax.
 Ang. Carr.—Angell on Carriers.
 Ang. Corp.—Angell on Private Corporations.
 Ang. Ins.—Angell on Insurance.
 Ang. Lim.—Angell on Limitations.
 Ang. T. W.—Angell on Property in Tide Waters.
 Ang. Waterc.—Angell on Watercourses.
 Ang. & A. Corp.—Angell & Ames on Corporations.
 Ang. & D. High.—Angell & Durfree on Highways.
 Ann, or Anne—Queen Anne; thus, 1 Ann, denotes the first year of Queen Anne's reign.
 Ann. Ins.—Annesly on Insurance.
 Annaly—Annaly's King's Bench Reports.
 Anon.—Anonymous.
 Ans. Cont.—Anson on Contracts.
 Anstr.—Anstruther's Exchequer Reports.
 Anth. Abr.—Anthon's Abridgment.
 Anth. Ill. Dig.—Anthony's Illinois Digest.
 Anth. L. S.—Anthon's Law Student.
 Anth. (N. Y.)—Anthon's New York Nisi Prius Reports.
 Anth. Prec.—Anthon's Precedents.
 Anth. Shep.—Anthon's Sheppard's Touchstone.
 Ap. Just.—*Apud Justinian*; Justinian's Institutes.
 App.—Apposition.
 App. Cas.—Appeal Cases.
 App. Ev.—Appleton on Evidence.
 App. (Me.)—Appleton's Maine Reports, (Vols. 19 & 20 Me.)
 App. R. N. Z.—Appeal Reports, New Zealand.
 Appx.—Appendix.
 Apud—In; contained in; quoted in.
 Arch. B. L.—Archbold's Bankrupt Law.
 Arch. Civ. Pl.—Archbold on Civil Pleading.
 Arch. Cr. Pl.—Archbold on Criminal Pleading and Evidence.
 Arch. Just.—Archbold's Justice of the Peace.
 Arch. L. & T.—Archbold on Landlord and Tenant.
 Arch. N. P.—Archbold's Nisi Prius Law.
 Arch. Paup. L.—Archbold's Pauper Lunatics.
 Arch. Pr.—Archbold on Practice.
 Arg.—*Arguendo Argumentum*.
 Arg. R. of L.—Argyle's Reign of Law.
 Ark.—Arkansas; Arkansas Supreme Court Reports.
 Arkl.—Arkley's Scotch Justiciary Court Reports.
 Arms. M. & O.—Armstrong, Macartney & Ogle's Irish Nisi Prius Reports.
 Arn.—Arnold's Common Pleas Reports.
 Arn. Ins.—Arnould on Marine Insurance.
 Arn. Mun. Corp.—Arnold on Municipal Corporations.
 Arn. & H.—Arnold & Hodges' Queen's Bench Reports.
 Arn. & H. B. C.—Arnold & Hodges' Bail Court Reports.
 Arnot—Arnot's Criminal Cases, Scotland.
 Art.—Article.
 Ashm. (Pa.)—Ashmead's Pennsylvania Reports.
 Asp.—Aspinall's Maritime Cases.
 Ast.—Aston's Entries.
 Ath. Mar. Set.—Atherly on Marriage Settlements.
 Atk.—Atkyn's English Chancery Reports.
 Atk. Conv.—Atkinson on Conveyancing.
 Atk. Mark. Tit.—Atkinson on Marketable Titles.
 Atk. P. T.—Atkyn's Parliamentary Tracts.
 Atk. Sher.—Atkinson on Sheriffs.
 Atty.—Attorney.
 Atty-Gen.—Attorney-General.
 Aust. Juris.—Austin on Jurisprudence.
 Austral. Jur.—Australasian Jurist.
 Austral. Jur. Rep.—Australian Jurist Reports.

Ayck. Ch. F.—Ayckbourn's Chancery Forms and Orders.
Ayck. Jur.—Ayckbourn's Jurisdiction and Practice.
Ayl. Pan.—Ayliffe's Pandects.
Ayl. Par.—Ayliffe's *Parergon Juris Canonici Anglicani*.
Azuni Mar. Law—Azuni on Maritime Law.

B.

B.—*Bancus*; Common Bench. Book. *See A.*
B. C.—Bail Court. Bell's Commentaries on the Law of Scotland.
B. C. C.—*See* Bail Ct. Cas.
B. C. R.—*See* Bail Ct. Rep.
B. Ecc. L.—*See* Burn. Eccl. L.
B. Just.—*See* Burn. Just.
B. Mon. (Ky.)—B. Monroe's Kentucky Reports.
B. N. C.—*See* Bro. N. C.
B. N. P.—*See* Bull. N. P.
B. P. B.—Buller's Paper Book.
B. R.—*Bancus Regis*; King's Bench.
B. R. H.—King's Bench Cases tempore Hardwicke.
B. & A. or **B. & Ald.**—*See* Barn. & A.
B. & A. Cas.—*See* Barr. & Aus.
B. & Ad.—*See* Barn. & Ad.
B. & B.—*See* Brod. & B.
B. & C.—*See* Barn. & C.
B. & H. Dig.—*See* Ben. & H. Dig.
B. & H. L. Cas.—*See* Ben. & H. L. Cas.
B. & L.—*See* Brown. & L.
B. & P.—*See* Bos. & P.
B. & S.—*See* Best & S.
Bab. Auc.—Babington on Auctions.
Bab. Set-off—Babington on Set-off and Mutual Credit.
Bac. Abr.—Bacon's Abridgment.
Bac. Comp. Arb.—Bacon's Complete Arbitrator.
Bac. El. Com. L.—Bacon's Elements of the Common Law.
Bac. Gov.—Bacon on Government.
Bac. Law Tr.—Bacon's Law Tracts.
Bac. Max.—Bacon's Maxims.
Bac. Uses—Bacon on Statute of Uses.
Bag.—Bagehot on the English Constitution.
Bail Ct. Cas.—Lowndes & Maxwell's Bail Court Cases.
Bail Ct. Rep.—Saunders & Cole's Bail Court Reports.
Bailey (S. C.) Eq.—Bailey's South Carolina Equity Reports.
Bailey (S. C.) L.—Bailey's South Carolina Law Reports.
Bain. M. & M.—Bainbridge on Mines and Minerals.
Baker High.—Baker's Law of Highways in England and Wales.
Baldw. Bankr.—Baldwin on Bankruptcy.
Baldw. Const.—Baldwin on the Constitution.
Baldw. Dig.—Baldwin's Connecticut Digest.
Baldw. (U. S.)—Baldwin's United States Circuit Court Reports.
Balf.—Balfour's Practice of Law of Scotland.
Ball Nat. B.—Ball on National Banks.
Ball Prin.—Ball's Principles of Torts and Contracts.
Ball & B.—Ball & Beatty's Irish Chancery Reports.
Ballan. Lim.—Ballantine on Limitations.

Bank. Inst.—Bankton's Institutes of Law of Scotland.
Bank. Mag.—The Banker's Magazine.
Bankr. Reg.—National Bankruptcy Register Reports.
Bankr. Reg. Dig.—National Bankruptcy Register Digest.
Bann. Lim.—Banning on Limitations of Actions.
Barb. Cr. Pl.—Barbour's Criminal Pleadings.
Barb. Dig.—Barbour's Digest of Barbour's New York Reports.
Barb. Eq. Dig.—Barbour's Equity Digest.
Barb. Grot.—Barbeyrac's Grotius on War and Peace.
Barb. (N. Y.)—Barbour's New York Supreme Court Reports.
Barb. (N. Y.) Ch.—Barbour's New York Chancery Reports.
Barb. Part.—Barbour on Parties to Actions.
Barb. Puff.—Barbeyrac's Puffendorf on Law of Nature and of Nations.
Barb. Set-off—Barbour on Set-off.
Barn.—Barnardiston's King's Bench Reports.
Barn. Ch.—Barnardiston's Chancery Reports.
Barn. Sher.—Barnes' Sheriff.
Barn. & A. or **Barn. & Ald.**—Barnewall & Alderson's King's Bench Reports.
Barn. & Ad.—Barnewall & Adolphus' King's Bench Reports.
Barn. & C.—Barnewall & Cresswell's King's Bench Reports.
Barnes—Barnes Notes of English Practice.
Baron S. & Mort.—Baron on Bills of Sale and Chattel Mortgages.
Barr. For. Conv.—Barry's Forms and Precedents in Conveyancing.
Barr. Ob. Stat.—Barrington's Observations on Statutes.
Barr (Pa.)—Barr's Pennsylvania Reports. Vols. 1-10 Pennsylvania State Reports.
Barr. Ten.—Barry's Tenures.
Barr. & Arn.—Barron & Arnold's Election Cases.
Barr. & Aus.—Barron & Austin's Election Cases.
Bart. Conv.—Barton's Elements of Conveyancing.
Bart. Eq.—Barton's Suit in Equity.
Bart. Leg. Max.—Barton's Legal Maxims.
Bart. Prec.—Barton's Precedents of Conveyancing.
Batem. Ag.—Bateman on Agency.
Batem. Auc.—Bateman's Law of Auctions.
Batem. Com. L.—Bateman's Commercial Law.
Batem. High.—Bateman on Highways.
Batem. P. & C. L.—Bateman's Political and Constitutional Law.
Bates Dig. F. Ins.—Bates' Digest of the Law of Fire Insurance.
Batt. Sp. Perf.—Batten on Specific Performance.
Batty—Batty's Irish King's Bench Reports.
Baxt. (Tenn.)—Baxter's Tennessee Reports.
Bay (S. C.)—Bay's South Carolina Reports.
Bayl. Bills—Bayley on Bills and Notes.
Bayl. Cham. Pr.—Bayley's Chamber Practice.
Beam. Eq. Pl.—Beames on Equity Pleading.
Beam. Ne Ex.—Beames on Ne Exeat.
Beas. (N. J.)—Beasley's New Jersey Chancery Reports.
Beat.—Beatty's Irish Chancery Reports.
Beaum. Sale—Beaumont on Bills of Sale.
Beav.—Beavan's Rolls Court Reports.
Beaw.—Beawes' *Lex Mercatoria*.

- Becc.—Beccaria on Crimes and Punishments.
 Beck Med. Jur.—Beck's Medical Jurisprudence.
 Bedf. Pro. & Div.—Bedford's Final Guide to Probate and Divorce.
 Bee, or Bee Adm.—Bee's Admiralty Reports.
 Bell Ap. Cas.—Bell's House of Lords Cases.
 Bell C.—Bell's Scotch Court of Sessions Cases.
 Bell Com.—Bell's Commentaries on Law of Scotland.
 Bell Cr. Cas.—Bell's Crown Cases.
 Bell, Del. U. S.—Beller's Delineation of Universal Law.
 Bell Dict.—Bell's Dictionary of Law of Scotland.
 Bell Dict. Dec.—Bell's Dictionary of Decisions.
 Bell H. L.—Bell's House of Lords Cases.
 Bell Husb. & W.—Bell on Husband and Wife.
 Bell Ilus.—Bell's Illustrations of Principles.
 Bell Med. Jur.—Bell's Medical Jurisprudence.
 Bell P. C.—Bell's Cases in Parliament.
 Bell Prin.—Bell's Principles of Law of Scotland.
 Bell Sales—Bell on Sales.
 Bell Sess. Cas.—Bell's Cases in the Court of Sessions.
 Bell Styles.—Bell's System of Forms of Deeds.
 Bellew.—Bellew's King's Bench Cases.
 Belt Sup. Ves.—Belt's Supplement to Vesey's Reports.
 Belt Ves. Sen.—Belt's edition of Vesey Senior's Reports.
 Ben. Adm. Pr.—Benedict's Admiralty Practice.
 Ben. Aver.—Benecke on Average.
 Ben. Br. Cr.—Benedikt on Brains of Criminals.
 Ben. (U. S.)—Benedict's District Court Reports.
 Ben. & H. Dig.—Bennett & Heard's Massachusetts Digest.
 Ben. & H. L. Cas.—Bennett & Heard's Leading Cases.
 Ben. & Sl. Dig.—Benjamin & Slidell's Louisiana Digest.
 Benj. Sales—Benjamin on Sales.
 Benl.—Benloe's King's Bench Reports.
 Benl. & D.—Benloe & Dalison's Common Pleas Reports.
 Benn. Diss. or Benn. Pract.—Bennett's Proceedings before Masters in Chancery.
 Benn. Fire Ins. Cas.—Bennett's Fire Insurance Cases.
 Benn. & H. Cr. Cas.—Bennett & Heard's Leading Criminal Cases.
 Benn. & H. Dig.—Bennett & Heard's Massachusetts Digest.
 Benth. Jud. Ev.—Bentham's Judicial Evidence.
 Benth. Leg.—Bentham's Theory of Legislation.
 Bert.—Berton's New Brunswick Reports.
 Bess. L. Prec.—Besson's Law Precedents.
 Best Ev.—Best on Evidence.
 Best Pres.—Best on Presumptions.
 Best & S.—Best & Smith's Queen's Bench Reports.
 Betts Adm. Pr.—Betts Admiralty Practice.
 Bev. Hom.—Bevil on Homicide.
 Bibb (Ky.)—Bibb's Kentucky Reports.
 Bickn. Cr. Pr.—Bicknell's Criminal Practice in Indiana.
 Big. Bills—Bigelow on Bills, Notes and Checks.
 Big. Cas. B. & N.—Bigelow's Cases on Bills and Notes.
 Big. Estop.—Bigelow on Estoppel.
 Big. Fraud—Bigelow on the Law of Fraud.
 Big. Over. Cas.—Bigelow's Overruled Cases.
 Big. L. & A. Ins. Cas.—Bigelow's Life and Accident Insurance Cases.
 Big. Torts—Bigelow's Leading Cases in Torts.
 Bill. Aw.—Billing on the Law of Awards.
 Bing.—Bingham's Common Pleas Reports.
 Bing. Desc.—Bingham on Descent.
 Bing. Exec. Cont.—Bingham on Executory Contracts.
 Bing. N. C.—Bingham's New Cases, English Common Pleas.
 Bing. Real Est.—Bingham on Real Estate.
 Bing. & C. Rents—Bingham & Colvin on Rents, &c.
 Binn. Just.—Binns' Pennsylvania Justice.
 Binn. (Pa.)—Binney's Pennsylvania Reports.
 Bird Conv.—Bird on Conveyancing.
 Bird L. & T.—Bird on the Law of Landlords, Tenants and Lodgers.
 Bird Sol. Pr.—Bird's Solution of Precedents of Settlements.
 Bish. Cont.—Bishop on Contracts.
 Bish. Cr. L.—Bishop on Criminal Law.
 Bish. Cr. Pro.—Bishop's Criminal Procedure.
 Bish. Insolv. Dr.—Bishop on Insolvent Debtors.
 Bish. Mar. W.—Bishop on the Law of Married Women.
 Bish. Mar. & D.—Bishop on Marriage and Divorce.
 Bish. Stat. Cr.—Bishop on Statutory Crimes.
 Bisp. Pr. Eq.—Bispham's Principles of Equity.
 Biss. Est., or Biss. Life Est.—Bisset on Estates for Life.
 Biss. Part.—Bisset on Law of Partnership.
 Biss. (U. S.)—Bissell's Circuit Court Reports.
 Bitt. Pr. Cas.—Bittleston's Practice Cases.
 Bl. Com.—Blackstone's Commentaries.
 Bl. D. & O.—Blackham, Dundas & Osborne's Irish Nisi Prius Reports.
 Bl. H.—Henry Blackstone's Reports.
 Bl. Law Tr.—Blackstone's Law Tracts.
 Bl. R.—William Blackstone's Common Law Reports.
 Bl. Ten.—Blount's Tenures.
 Black (U. S.)—Black's Supreme Ct. Reports.
 Blackb. Sales—Blackburn on Sales.
 Blackf. (Ind.)—Blackford's Indiana Reports.
 Blacks. Com.—Blackstone's Commentaries.
 Blacks. R.—William Blackstone's Common Law Reports.
 Blackw. Tax T.—Blackwell on Tax Titles.
 Blake Ch. Pr.—Blake's New York Chancery Practice.
 Blan. Life An.—Blanch on Life Annuities.
 Blanch. & W. Mines—Blanchard & Weeks on Mines.
 Bland (Md.)—Blands Maryland Chancery Reports.
 Blansh. Lim.—Blanshard on Limitations.
 Blatchf. Pr. Cas.—Blatchford's District Court Prize Cases.
 Blatchf. (U. S.)—Blatchford's Circuit Court Reports.
 Blatchf. & H.—Blatchford & Howland's Admiralty Reports.
 Bli. or Bligh—Bligh's House of Lords Reports.
 Bli. N. S. or Bligh N. S.—Bligh's House of Lords Reports, New Series.
 Bliss Code—Bliss' New York Annotated Code.
 Bliss Code Pl.—Bliss on Code Pleading.
 Bliss L. Ins.—Bliss on Life Insurance.

- Bloomf. Cas.—Bloomfield's New Jersey Negro Cases.
 Blount—Blount's Law Dictionary and Glossary.
 Blum. B'key.—Blumensteil on Bankruptcy.
 Blyd. Us.—Blydenburg on Usury.
 Boh. Dec.—Bohun's Declarations.
 Boh. Eng. L.—Bohun's English Lawyer.
 Bond (U. S.)—Bond's Circuit Court Reports.
 Book Judg.—Book of Judgments.
 Boote Ch. Pr.—Boote's Chancery Practice.
 Booth Real Ac.—Booth on Real Actions.
 Borth. Lib.—Borthwick on the Law of Libel.
 Bos. & P.—Bosanquet & Puller's Common Pleas Reports.
 Bos. & P. N. R.—Bosanquet & Puller's Common Pleas New Reports.
 Bosc. Convic.—Boscawen on Convictions.
 Bost. L. Rep.—The Boston Law Reporter.
 Bosw. (N. Y.)—Bosworth's New York Superior Court Reports.
 Bott—Bott's Poor Laws.
 Bourke Par. Prec.—Bourke's Parliamentary Precedents.
 Bouv. Dict., or Bouvier—Bouvier's Law Dictionary.
 Bouv. Inst.—Bouvier's Institutes.
 Bov. Pat. Cas.—Bovill's Patent Cases.
 Bowl. Lib.—Bowles on Libels.
 Bowy. Com.—Bowyer's Commentaries on Universal Law.
 Bowy. Const. L.—Bowyer on Constitutional Law.
 Bowy. M. Civ. L.—Bowyer on Modern Civil Law.
 Boyce Man.—Boyce's Manual U. S. Circuit Court Practice.
 Boyd Adm. Pr.—Boyd's Admiralty Practice.
 Boyd Mer. Sh. L.—Boyd's Merchant Shipping Laws.
 Br. Abr.—Brooke's Abridgment.
 Br. Brev. Jud.—Brownlow's *Brevia Judicialia*.
 Br. Ch. C.—Brown's English Chancery Cases.
 Br. N. C.—Brooke's (King's Bench) New Cases.
 Br. P. C.—Brown's House of Lords Parliamentary Cases.
 Bradw. (Ill.)—Bradwell's Reports, Illinois Appeal Courts.
 Brac., or Bract.—Bracton's Treatise on the Laws and Customs of England.
 Brack. L. Misc.—Brackenridge's Law Miscellany.
 Brack. Trusts—Brackenridge on Trusts.
 Bradb. Dist.—Bradby on Distresses.
 Bradf. (N. Y.) or Bradf. Surr.—Bradford's New York Surrogate Reports.
 Braithw. Pr.—Braithwaite's Record and Writ Practice.
 Branch Pr. or Branch Max.—Branch's Principles of Law and Equity; Branch's Maxim's.
 Brand. For. Att.—Brandon on the Law of Foreign Attachment.
 Brandt Div.—Brandt on Divorce or Matrimonial Causes.
 Brandt S. & G.—Brandt on Suretyship and Guaranty.
 Brayt. (Vt.)—Brayton's Vermont Reports.
 Breese (Ill.)—Breese's Illinois Reports.
 Brev. Dig.—Brevard's Digest.
 Brev. Sel.—*Brevia Selecta*; Choice Writs.
 Brev. (S. C.)—Brevard's South Carolina Reports.
 Bre vs. (Pa.)—Brewster's Pennsylvania Reports.
 Brice Pub. Wor.—Brice on Laws Relating to Public Worship.
 Brice U. V.—Brice on the Doctrine of Ultra Vires.
 Bridg. Conv.—Bridgman's Precedents of Conveyancing.
 Bridg. Dig. Ind.—Bridgman's Digested Index.
 Bridg. J.—J. Bridgman's Common Pleas Reports.
 Bridg. Leg. Bib.—Bridgman's Legal Bibliography.
 Bridg. O.—Orlando Bridgman's Common Pleas Reports.
 Bridg. Refl.—Bridgman's Reflections on the Study of the Law.
 Bridg. Synth.—Bridgman's Synthesis.
 Bridg. Thes. Jur.—Bridgman's *Thesaurus Juridicus*.
 Bright. Costs—Brightly on Costs.
 Bright. Dig.—Brightly's Digest of the Laws of the United States.
 Bright. El. Cas.—Brightly's Election Cases.
 Bright. Eq.—Brightly's Equity Jurisprudence.
 Bright. Fed. Dig.—Brightly's Federal Digest.
 Bright H. & W.—Bright's Husband and Wife.
 Bright. (Pa.) N. P.—Brightly's Pennsylvania Nisi Prius Reports.
 Bright. Purd.—Brightly's Purdon's Pennsylvania Digest.
 Britt.—Britton's Pleas of the Crown.
 Bro. Abr.—Brooke's Abridgment.
 Bro. Ch. C.—Brown's English Chancery Cases.
 Bro. Civ. L.—Brown's Civil and Admiralty Law.
 Bro. Com.—Brown's Commentaries.
 Bro. Ent.—Brown's Entries.
 Bro. Lim.—Brown on Limitations.
 Bro. N. C.—Brooke's (King's Bench) New Cases.
 Bro. Nat. B. Cas.—Browne's National Bank Cases.
 Bro. Not.—Brooke on Notaries.
 Bro. P. C.—Brown's (House of Lords) Parliamentary Cases.
 Bro. Sales—Brown on Sales.
 Bro. Stair—Brodie's Notes and Supplement to Stair's Institutes of Scottish Law.
 Bro. Supp.—Brown's Supplement to Morrison's Dictionary.
 Bro. Syn.—Brown's Synopsis of Scotch Court of Sessions Decisions.
 Bro. V. M.—Brown's *Vade Mecum*.
 Brock. Marsh.—Brockenbrough's United States Reports. Marshall's Decisions.
 Brod. & B.—Broderip & Bingham's Common Pleas Reports.
 Broom. Com. L.—Broom's Commentaries on the Common Law.
 Broom Const. L.—Broom's Constitutional Law.
 Broom Max.—Broom's Legal Maxim's.
 Broom Part.—Broom on Parties to Actions.
 Broom & H. Com.—Broom & Hadley's English Commentaries.
 Broun, or Broun Just.—Broun's Scotch Justiciary Court Reports.
 Brown, or Brown (Mich.) N. P.—Brown's Michigan Nisi Prius Reports.
 Brown Adm.—Brown's Admiralty Reports, U. S. Circuit Court.
 Brown Ch. C.—Brown's English Chancery Cases.
 Brown Dict. or Brown—Brown's Law Dictionary.
 Brown D. & M.—Brown's Practice in Divorce and Matrimonial Causes.

Brown Ent.—Brown's Entries.	Burg. Col. & For. L.—Burge's Colonial and Foreign Law.
Brown Fixt.—Brown on the Law of Fixtures.	Burg. Confl. L.—Burge on Conflict of Laws.
Brown Lim.—Brown on Limitations.	Burg. Sur.—Burge's Law of Suretyship.
Brown P. C.—Brown's (House of Lords) Parliamentary Cases.	Burlam. Nat. L.—Burlamaqui's Natural and Public Law.
Brown Prob. Pr.—Brown's Probate Practice.	Burn. Cr. L.—Burnett on Criminal Law of Scotland.
Brown R.—Brown's Scotch Reports.	Burn Dict.—Burn's Law Dictionary.
Brown Sales.—Brown on Sales.	Burn Eccl. L.—Burn's Ecclesiastical Law.
Brown St of F.—Brown on the Statute of Frauds.	Burn Just.—Burn's Justice of the Peace.
Brown Supp.—Brown's Supplement to Morrison's Dictionary.	Burn. (Wis.)—Burnett's Wisconsin Territorial Court Reports.
Brown Supp. R.—Brown's Supplemental Scotch Reports.	Burr.—Burrow's King's Bench Reports.
Brown Syn.—Brown's Synopsis of Scotch Court of Session Decisions.	Burr. Sett. Cas.—Burrow's Settlement Cases.
Brown V. M.—Brown's <i>Vade Mecum</i> .	Burr Tr.—Burr's Trial.
Brown. & L.—Browning & Lushington's English Admiralty Reports.	Burrill Ass.—Burrill's Law of Voluntary Assignments.
Browne Act.—Browne's Actions.	Burrill Circ. Ev.—Burrill's Circumstantial Evidence.
Browne Carr.—Browne on the Law of Carriers.	Burrill Dict., or Burrill—Burrill's Law Dictionary.
Browne Civ. L.—Browne's Civil and Admiralty Law.	Burrill Pr.—Burrill's Practice in Personal Actions.
Browne Dig. Div.—Browne's Digest of Divorce and Alimony.	Burroughs Pub. Sec.—Burroughs on Public Securities.
Browne Div.—Browne on Divorce.	Burroughs Tax.—Burroughs on Taxation.
Browne Fixt.—Browne on Fixtures.	Burt. Comp. R. P.—Burton's Elementary Compendium of the Law of Real Property.
Browne Fraud.—Browne on the Statute of Frauds.	Busb. (N. C.) Eq.—Busbee's North Carolina Equity Reports.
Browne Ins.—Browne on Insanity.	Busb. (N. C.) L.—Busbee's North Carolina Law Reports.
Browne (Pa.)—Browne's Pennsylvania Common Pleas Reports.	Bush (Ky.)—Bush's Kentucky Reports.
Browne Prob. Pr.—Browne's Probate Practice.	Bush. P. El.—Bushby on Parliamentary Elections.
Browne St. Fr.—Browne on the Statute of Frauds.	Butler Co. Litt.—Butler's Notes to Coke on Littleton.
Browne Tr.—Browne's Law of Trademarks.	Byles Bills—Byles on Bills.
Browning Mar. & D.—Browning's Marriage and Divorce.	Bynk. Jur. Pub.—Bynkershoek's <i>Quaestiones Juris Publici</i> .
Browning & L.—Browning & Lushington's English Admiralty Reports.	Bynk. War—Bynkershoek's Law of War.
Brownl. or Brownl. & G.—Brownlow and Goldsborough's Common Pleas Reports.	Byth. Prec.—Bythewood's Precedents.
Brownl. Brev. Jud.—Brownlow's <i>Brevia Judicialia</i> .	Byth. & J. Conv.—Bythewood & Jarman's System of Conveyancing.
Bruce—Bruce's Scotch Court of Sessions Cases.	
Bruce M. L.—Bruce on Military Law.	
Buchan.—Buchanan's Reports, Cape of Good Hope.	
Buchan. C. C.—Buchanan's Scotch Criminal Cases.	
Buck—Buck's Bankruptcy Cases.	
Buckn. Lun.—Bucknill on Lunacy.	
Buff. Super. Ct. R.—Buffalo Superior Court Reports.	
Bull. N. P.—Buller's Nisi Prius.	
Bull. & C. Dig.—Bullard & Curry's Louisiana Digest.	
Bull. & L.—Bullen & Leake's Precedents of Pleadings.	
Buller, MSS.—Same as A. P. B. (<i>q. v.</i>)	
Bulst.—Bulstrode's King's Bench Reports.	
Bump Bankr. Pr.—Bump's Bankruptcy Practice.	
Bump Fed. Pro.—Bump's Federal Procedure.	
Bump Fraud. Conv.—Bump on Fraudulent Conveyances.	
Bump No. Const.—Bump's Notes of Constitutional Decisions.	
Bump Pat.—Bump on Patents, Trademarks and Copyrights.	
Bunb.—Bunbury's Exchequer Reports.	
Buny. Ass.—Bunyon on Life Assurance.	

C.

C.—Caption; Chapter; Chancellor; Chancery; Code; <i>Codex</i> .
C. B.—Common Bench; Chief Baron; Common Bench Reports.
C. B. N. S.—Common Bench Reports, New Series.
C. C.—Chancery Cases; Crown Cases; Civil Code; Circuit Court.
C. C. A.—County Court Appeals.
C. C. E.—See Cai. (N. Y.) Cas.
C. C. P.—See Code Civ. Pro.
C. C. R.—Crown Cases Reserved.
C. Cr. P.—See Code Cr. Pro.
C. E. Gr. (N. J.)—C. E. Green's New Jersey Equity Reports.
C. J.—See Ch. J.
C. J. C.—See Cowp. J. C.
C. L. P. Act.—See Com. L. P. Act.
C. L. R.—See Com. L. R.
C. M. & R.—See Crompt. M. & R.
C. P.—Common Pleas; Code of Procedure.
C. P. D.—Law Reports, Common Pleas Division.

- C. S.—Court of Session.
 C. t. N.—Cases tempore Northington.
 C. & A.—See Cooke & A.
 C. & F.—See Cl. & F.
 C. & H. Dig.—See Cov. & H. Dig.
 C. & J.—See Crompt. & J.
 C. & K.—See Car. & K.
 C. & M.—See Car. & M.
 C. & P.—See Car. & P.
 Ca.—Case; Cases.
 Ca. resp.—*Capias ad respondendum*.
 Ca. sa.—*Capias ad satisfaciendum*.
 Cab. Int. & Att.—Cabane on the Law of Interpleader and the Attachment of Debts.
 Cai. (N. Y.)—Caines' New York Reports.
 Cai. (N. Y.) Cas.—Caines' New York Cases in Error.
 Cai. Pr.—Caines' Practice.
 Cairns Dec.—Cairns' Decisions.
 Cal.—California; California Reports.
 Cal. Pr.—Hart's California Practice.
 Cald.—Caldecott's Justice of the Peace Cases.
 Cald. Arb.—Caldwell on Arbitration.
 Call (Va.)—Call's Virginia Reports.
 Calth.—Calthorpe's King's Bench Reports.
 Calth. Copyh.—Calthorpe on Copyholds.
 Calv. Lex.—Calvin's *Lexicon Juridicum*.
 Calv. Part.—Calvert on Parties to Suits in Equity.
 Cam.—Cameron's Upper Canada Queen's Bench Reports.
 Cam. Brit.—Camden's *Brittania*.
 Cam. Seacc.—*Camera Seaccaria*.
 Cam. & N. (N. C.)—Cameron & Norwood's North Carolina Conference Reports.
 Campb.—Campbell's Nisi Prius Reports.
 Campb. Dec.—Campbell's Taney's Decisions.
 Campb. Ld. Ch.—Campbell's (Lord) Lives of the Lord Chancellors.
 Campb. Ld. Ch. J.—Campbell's (Lord) Lives of the Chief Justices.
 Campb. Neg.—Campbell on Negligence.
 Can.—Canada.
 Can. L. J.—Canada Law Journal.
 Can. L. T.—Canadian Law Times.
 Can. Sup. Ct.—Canada Supreme Court Reports.
 Cand. M. C. Pr.—Candy's Mayor's Court Practice.
 Cap.—*Capitula*; Chapter.
 Car.—*Carolus*; as 13 Car. II. c. I.
 Car. Cr. L.—Carrington's Criminal Law.
 Car. H. & A.—Carrow, Hamerton & Allen's Magistrate's Cases.
 Car. L. Rep.—Carolina Law Repository.
 Car. O. & B.—Carrow, Oliver & Beavan's Railway and Canal Cases.
 Car. Qu. Tr.—Trial of Queen Caroline.
 Car. & K.—Carrington & Kirwan's Nisi Prius Reports.
 Car. & M.—Carrington & Marshman's Nisi Prius Reports.
 Car. & O.—Carrow & Oliver's Railway and Canal Cases.
 Car. & P.—Carrington & Paine's Nisi Prius Reports.
 Carp.—Carpmael's Patent Cases.
 Cart.—Carter's Common Pleas Reports.
 Cart. (Ind.)—Carter's Indiana Reports.
 Carth.—Carthew's King's Bench Reports.
 Caruth. L. S.—Caruther's History of a Law Suit.
 Cary—Cary's English Chancery Reports.
 Cary Part.—Cary on Partnership.
 Cas. B. R.—Cases *Banco Regis*.
 Cas. Ch.—Cases in Chancery.
 Cas. L. & Eq.—Cases in Law and Equity.
 Cas. Pr. C. P.—Cases of Practice, Common Pleas.
 Cas. Pr. K. B.—Cases of Practice, King's Bench.
 Cas. Self Def.—Horrigan and Thompson's Cases of Self Defence.
 Cas. Set.—Cases of Settlement, King's Bench.
 Cas. Six Circ.—Cases on the Six Circuits, Irish King's Bench.
 Cas. t. F.—Cases tempore Finch, English Chancery.
 Cas. t. H.—Cases tempore Hardwicke, King's Bench.
 Cas. t. Holt.—Cases tempore Holt, King's Bench.
 Cas. t. King.—Cases tempore King, English Chancery.
 Cas. t. Macc.—Cases tempore Macclesfield, English Law and Equity.
 Cas. t. Talb.—Cases tempore Talbot, English Chancery.
 Cas. t. Will. III.—Cases tempore William III.
 Cas. & Op.—Cases with Opinions of Eminent Counsel.
 Cass. Man. Proc.—Cassel's Manual of Procedure.
 Cast. Ra.—Castle on the Principle of Rating.
 Cav. Sec.—Cavanagh on Securities.
 Cent. L. J.—Central Law Journal.
 Ch.—Chancellor; Chancery.
 Ch. Cas.—Cases in Chancery.
 Ch. Cas. Ch.—Choyce Cases in Chancery.
 Ch. Chamb.—Chancery Chambers, Upper Canada.
 Ch. D.—Law Reports, Chancery Division.
 Ch. J.—Chief Justice; Chief Judge.
 Ch. Pre.—Chancery Precedents.
 Ch. R.—Chancery Reports.
 Ch. Sent.—Chancery Sentinel, New York city.
 Chadw. Man.—Chadwick's Probate Court Manual.
 Chal. Dig.—Chalmer's Digest of Bills of Exchange.
 Chal. Op.—Chalmer's Opinions.
 Chamb.—Chamber Reports, Upper Canada.
 Chamb. High.—Chambers on Highways and Bridges.
 Chamb. L. & T.—Chambers on Landlord and Tenant.
 Chamb. Pub. H.—Chambers on Public Health and Local Government.
 Chamb. Ra.—Chambers on Rate and Rating.
 Chand. (Wis.)—Chandler's Wisconsin Reports.
 Chap. & S. Copyr.—Chappell & Shoard's Copyright Law.
 Char. Merc.—*Charta Mercatoria*.
 Char. Pr. Cas.—Charley's English Practice Cases.
 Charl. R. M. (Ga.)—R. M. Charlton's Georgia Reports.
 Charl. T. U. P. (Ga.)—T. U. P. Charlton's Georgia Reports.
 Cheves (S. C.)—Cheves' South Carolina Cases at Law.
 Cheves (S. C.) Eq.—Cheves' South Carolina Cases in Equity.
 Chic. L. N.—Chicago Legal News.
 Chip. Cont.—Chipman on Contracts for Payment.
 Chip. D. (Vt.)—D. Chipman's Vermont Reports.
 Chip. N. (Vt.)—N. Chipman's Vermont Reports.

- Chit. App.—Chitty on Apprentices & Journeymen.
 Chit. Arch. Pr.—Chitty's Archbold's Practice.
 Chit. B. C.—Chitty's Bail Court Reports.
 Chit. Bills—Chitty on Bills.
 Chit. Bl. Com.—Chitty's Blackstone's Commentaries.
 Chit. Burn. J.—Chitty's Burns' Justice.
 Chit. Carr.—Chitty on Carriers.
 Chit. Com. L.—Chitty on Commercial Law.
 Chit. Cont.—Chitty on Contracts.
 Chit. Crim. L.—Chitty on Criminal Law.
 Chit. Desc.—Chitty on the Law of Descents.
 Chit. Eq. Dig.—Chitty's Equity Digest.
 Chit. Jr. Bills—Chitty Junior on Bills.
 Chit. Med. Jur.—Chitty's Medical Jurisprudence.
 Chit. Pl.—Chitty on Pleading.
 Chit. Gen. Pr.—Chitty on General Practice.
 Chit. Prec.—Chitty's Precedents of Pleading.
 Chit. Prerog.—Chitty on the Prerogatives of the Crown.
 Cho. Cas. Ch.—Choyce Cases in Chancery.
 Chris. B. L.—Christian's Bankrupt Law.
 Chris. Med. Jur.—Christison on Poisons & Medical Jurisprudence.
 Church. Sher.—Churchill on the Law of Sheriff.
 Chute Eq.—Chute's Equity in Relation to Common Law.
 Cinc. (O.)—Cincinnati Superior Court Reports.
 City Hall Rec.—New York City Hall Recorder.
 City Hall Rep.—New York City Hall Reporter.
 Civ.—Civil.
 Civ. Code—Civil Code.
 Civ. Pro. Rep.—Civil Procedure Reports, New York.
 Cl. Ass.—Clerk's Assistant.
 Cl. & F.—Clark & Finnelly's House of Lords' Reports.
 Cl. & F. N. S.—Clark & Finnelly's House of Lords' Reports, New Series.
 Clan. H. & W.—Clancy on the Law of Husband and Wife.
 Clark—Clark's House of Lords' Reports.
 Clark Dig. H. L.—Clark's Digest of House of Lords Reports.
 Clark H. L. Ind.—Clark's Index to Reports in the House of Lords.
 Clark L.—Clark's Enquiry into the Nature of Leases.
 Clarke Adm. Pr.—Clarke's Practice in Admiralty.
 Clarke Bills—Clarke on Bills, Notes, Cheques, & I. O. U's.
 Clarke Cr. L.—Clarke on Criminal Law of Canada.
 Clarke Extrad.—Clarke on Extradition.
 Clarke Ins.—Clarke on Insurance.
 Clarke (Iowa)—Clarke's Iowa Reports.
 Clarke (N. Y.) Ch.—Clarke's New York Chancery Reports.
 Clarke Part.—Clarke on Law of Partnership.
 Clayt.—Clayton's Assize Reports.
 Clerk Home—Clerk Home's Scottish Session Cases.
 Clerke Dig.—Clerke's Digest.
 Clerke Rud.—Clerke's Rudiments of American Law.
 Clem. Corp. Sec.—Clemens on Corporate Securities.
 Clev. Bank.—Cleveland on the Banking System.
 Cliff. (U. S.)—Clifford's Circuit Court Reports.
 Clift Ent.—Clift's Entries.
 Clin. & Sp. Dig.—Clinton & Spencer's Digest.
 Co.—Coke's Reports; Company; County.
 Co. Ent.—Coke's Entries.
 Co. Litt.—Coke on Littleton.
 Co. P. C.—Coke's Pleas of the Crown.
 Cobb. Slav.—Cobb on Slavery.
 Cochran.—Cochran's Nova Scotia Reports.
 Cock. & R.—Cockburn & Rowe's Election Cases.
 Cocke U. S. Pr.—Cocke's United States Practice.
 Cod. Jur. Civ.—*Codex Juris Civilis; Justinian Codex.*
 Codd. Dig. Tr.—Coddington's Digest of Trademarks.
 Code Civ., or Code N.—Code Civil; Code Napoleon.
 Code Civ. Pro.—Code of Civil Procedure.
 Code Cr. Pro.—Code of Criminal Procedure.
 Code La.—Louisiana Civil Code.
 Code P.—Code Penal.
 Code P. C.—*Code de Procedure Civile.*
 Code Pro.—Code of Procedure.
 Code R.—New York Code Reports.
 Code R. N. S.—New York Code Reports, New Series.
 Code Rep.—New York Code Reporter.
 Coe Pr.—Coe's Practice at Judges' Chambers.
 Col.—Colorado; Colorado Reports; Column.
 Col. Cas.—Coleman's New York Cases.
 Col. & C. Cas.—Coleman & Caines' New York Cases.
 Colb. Pr.—Colby's Practice.
 Coldw. (Tenn.)—Coldwell's Tennessee Reports.
 Cole Inf.—Cole on Criminal Informations.
 Coler Mun. B.—Coler's Law of Municipal Bonds.
 Coll.—Collyer's English Chancery Reports.
 Coll. Contrib.—Collier's Law of Contributories.
 Coll. Id.—Collinson on Idiots, &c.
 Coll. Min.—Collier on Mines.
 Coll. Parl. Cas.—Colles' Parliamentary Cases.
 Coll. Part.—Collyer on Partnership.
 Coll. Pat.—Collier on Patents.
 Colles—Colles Cases in Parliament.
 Com.—Comyn's King's Bench and Common Pleas Reports.
 Com. Cont.—Comyn on Contracts.
 Com. B.—Common Bench Reports.
 Com. B. N. S.—Common Bench Reports, New Series.
 Com. Dig.—Comyn's Digest.
 Com. L. P. Act—Common Law Procedure Act.
 Com. L. R.—Common Law Reports.
 Com. L. & T.—Comyn on Landlord & Tenant.
 Com. Us.—Comyn on Usury.
 Comb.—Comberbach's King's Bench Reports.
 Comst. Exrs.—Comstock on Executors.
 Comst. (N. Y.)—Comstock's New York Reports.
 Con. Dig. In.—Conover's Digested Index.
 Con. & L.—Connor & Lawson's Irish Chancery Reports.
 Cond. Ch. R.—Condensed Chancery Reports.
 Cond. Ex. R.—Condensed Exchequer Reports.
 Conf.—Cameron & Norwood's North Carolina Conference Reports.
 Cong.—Congress.
 Conk. Adm.—Conkling's Admiralty.
 Conk. Ex. Pow.—Conkling's Executive Powers.
 Conk. Pr.—Conkling's United States Courts Practice.

- Conk. & R. Just.—Conklin & Bissell's Iowa Justice.
- Conn.—Connecticut; Connecticut Reports.
- Cons. del Mare—*Consolato del Mare*.
- Consist.—Haggard's Consistory Court Reports.
- Const. (S. C.)—Trelway's South Carolina Constitutional Court Reports.
- Const. (S. C.) N. S.—Mill's South Carolina Constitutional Court Reports, New Series.
- Cont.—*Contra*; to the contrary. See Acc.
- Cooke—Cooke's Common Pleas Practice Cases.
- Cooke Def.—Cooke on Defamation.
- Cooke (Tenn.)—Cooke's Tennessee Reports.
- Cooke & A.—Cooke & Alcock's Irish King's Bench and Exchequer Chamber Reports.
- Cooley Bl. Com.—Cooley's Blackstone's Commentaries.
- Cooley Const. L.—Cooley on Constitutional Law.
- Cooley Const. Lim.—Cooley on Constitutional Limitations.
- Cooley Tax.—Cooley on the Law of Taxation.
- Cooley Torts—Cooley on Torts.
- Coop.—Cooper's English Chancery Reports.
- Coop. Eq. Pl.—Cooper on Equity Pleading.
- Coop. Inst.—Cooper's Institutes of Justinian.
- Coop. Lib.—Cooper on the Law of Libel.
- Coop. Med. Jur.—Cooper's Medical Jurisprudence.
- Coop. Pr. Cas.—Cooper's English Chancery Practice Cases.
- Coop. t. Brough.—Cooper's English Chancery Reports tempore Brougham.
- Coop. t. Cotten.—Cooper's English Chancery Reports tempore Cottenham.
- Coop. (Tenn.) Ch.—Cooper's Tennessee Chancery Reports.
- Coote Adm. Pr.—Coote Admiralty Practice.
- Coote Mort.—Coote on Mortgages.
- Coote Pr.—Coote on the Practice of the High Courts of Justice.
- Coote Pro. Pr.—Coote's Probate Practice.
- Cop. Conv.—Copinger on Precedents in Conveyancing.
- Cop. Copyr.—Copinger on Copyright.
- Cop. Tit. D.—Copinger on Title Deeds.
- Copp M. Dec.—Copp's Mining Decisions.
- Corb. & D.—Corbett & Daniell's Election Cases.
- Cord Mar. W.—Cord on the Rights of Married Women.
- Corn. Rem.—Cornish on Remainders.
- Corn. Uses—Cornish on Uses.
- Corp. Jur. Civ.—*Corpus Juris Civilis*.
- Corp. Jur. Can.—*Corpus Juris Canonici*.
- Coryt. Pat.—Coryton on Patents.
- Couls. & F. Waters—Coulson and Forbes on Waters.
- County Ct. Rep.—County Court Reports, English.
- County Ct. Rep. N. S.—County Court Reports, New Series.
- Cov. Conv. Ev.—Coventry on Conveyancer's Evidence.
- Cov. & H. Dig.—Coventry and Hughes' Digest.
- Cow. Cr. Dig.—Cowen's Criminal Digest.
- Cow. Just.—Cowen's Justice of the Peace.
- Cow. (N. Y.)—Cowen's New York Reports.
- Cow. Tr.—Cowen's Treatise.
- Cowell, or Cowell Dict.—Cowell's Law Dictionary; Cowell's Interpreter.
- Cowp.—Cowper's King's Bench Reports.
- Cowp J. C.—Cowper's Justiciary Court Cases.
- Cox, or Cox Ch.—Cox's English Chancery Reports.
- Cox Anc. L.—Cox's Law and Science of Ancient Lights.
- Cox C. C.—Cox's English and Irish Criminal Cases.
- Cox Const.—Cox on the English Constitution.
- Cox Inst.—Homersham Cox's Institutes of the English Government.
- Cox Jt. St. Co.—Cox on the Law of Joint Stock Companies.
- Cox Mag. Cas.—Cox's English Magistrate Cases.
- Cox Tr. Cas.—Cox's American Trademark Cases.
- Coxe (N. J.)—Coxe's New Jersey Reports.
- Crabb Com. L.—Crabb's History of the Common Law.
- Crabb Conv.—Crabb's Precedents in Conveyancing.
- Crabb R. P.—Crabb on Real Property.
- Crabbe (U. S.)—Crabbe's United States Reports.
- Craig & P.—Craig & Philipps' English Chancery Reports.
- Craig. & S.—Craigie, Stewart & Paton's House of Lords' Reports.
- Cranch C. C.—Cranch's District of Columbia Circuit Court Reports.
- Cranell (U. S.)—Cranell's United States Reports.
- Crar. Pr.—Crary's New York Practice.
- Craw. & D.—Crawford & Dix's Irish Circuit Reports.
- Craw. & D. Abr. Cas.—Crawford & Dix's Abridged Notes of Irish Law and Equity Cases.
- Creas. Const.—Creasy on the English Constitution.
- Cressw. Rep.—Cresswell's Insolvency Reports.
- Crim. Con.—Criminal Conversation.
- Crim. L. Mag.—Criminal Law Magazine.
- Cro.—Croke's King's Bench and Common Pleas Reports. The separate volumes are cited as Cro. Eliz., Cro. Jac. and Cro. Car.
- Crock. Sher.—Crocker on Sheriffs.
- Crompt.—Star Chamber Cases.
- Crompt. Jur.—Crompton on Jurisdiction of Courts.
- Crompt. M. & R.—Crompton, Meeson & Roscoe's Exchequer Reports.
- Crompt. & J.—Crompton & Jervis' Exchequer Reports.
- Crompt. & M.—Crompton & Meeson's Exchequer Reports.
- Cross L.—Cross on Liens and Stoppage in Transitu.
- Cruise Dig.—Cruise's Digest of Law of Real Property.
- Crump M. Ins.—Crump on Marine Insurance and General Average.
- Ct. of Cl.—United States Court of Claims Reports.
- Ct. Sess. Cas.—Scotch Court of Sessions Cases.
- Cum. Civ. L.—Cumin's Manual of Civil Law.
- Cun.—Cunningham's King's Bench Reports.
- Cun. Dict.—Cunningham's Dictionary.
- Cun. El.—Cunningham's Parliamentary and Municipal Elections.
- Cun. & M. Elec.—Cunningham & Mattinson on Law Relating to Elections.
- Cun. & M. Prec. Pl.—Cunningham & Mattinson on Precedents of Pleadings.
- Curt. Ad. Dig.—Curtis' Admiralty Digest.
- Curt. Com.—Curtis' Commentaries on the United States Courts.

- Curt. Cond. (U. S.)—Curtis' Condensed United States Reports.
 Curt. Conv.—Curtis' American Conveyancer.
 Curt. Copyr.—Curtis on Copyright.
 Curt. Ecc., or Curteis—Curteis' Ecclesiastical Reports.
 Curt. Eq. Prec.—Curtis' Equity Precedents.
 Curt. Pat.—Curtis on Patents.
 Curt. Seam.—Curtis on Seamen.
 Curt. (U. S.)—Curtis' United States Reports.
 Curw. Abs. T.—Curwen on Abstracts of Title.
 Cush. El. Cas.—Cushing's Massachusetts Election Cases.
 Cush. (Mass.)—Cushing's Massachusetts Reports.
 Cush. Par. L.—Cushing's Parliamentary Law.
 Cush. Rom. L.—Cushing on the Roman Law.
 Cush. Trust Pr.—Cushing on Trustee Process.
 Cust. Rep.—Custer's Ecclesiastical Reports.
- D.**
- D.—Dialogue; Digest; Dictionary; *Dictum*.
 D. C.—District Court; District of Columbia.
 D. Chip. (Vt.)—D. Chipman's Vermont Reports.
 D. N. S.—See Dowl. N. S.
 D. P. B.—See Damp. MSS.
 D. & C.—See Deac. & C.
 D. & D. Prec. Conv.—Davidson's & Dickey's Concise Precedents in Conveyancing.
 D. & E.—See Durnf. & E.
 D. & L.—See Dowl. & L.
 D. & M.—See Dav. & M.
 D. & R.—See Dowl. & Ry.
 D. & S.—See Dr. & S.
 Dail. Reg.—Daily Register, New York City.
 Dag. Cr. L.—Dagge's Criminal Law.
 Dak. T.—Dakota Territory Reports.
 Dal.—Dalison's Common Pleas Reports.
 Dall.—Dallas' United States and Pennsylvania Reports.
 Dalr.—Dalrymple's Court of Session Cases.
 Dalr. Ent.—Dalrymple on Entails.
 Dalr. Feud. L.—Dalrymple on Feudal Law.
 Dalr. Feud. Prop.—Dalrymple on Feudal Property.
 Dalt. Just.—Dalton's Justice.
 Dalt. Sher.—Dalton's Sheriff.
 Daly (N. Y.)—Daly's New York Common Pleas Reports.
 Damp. MSS.—Same as A. P. B. (*q. v.*)
 D'An.—D'Anvers' Abridgment.
 Dan.—Daniell's Exchequer Equity Reports.
 Dan. Att.—Daniel on Attachment.
 Dan. Ch. Pr.—Daniell's Chancery Practice.
 Dan. Neg. Inst.—Daniel on Negotiable Instruments.
 Dana (Ky.)—Dana's Kentucky Reports.
 Dane Abr.—Dane's Abridgment.
 Dans. & L.—Danson & Lloyd's Mercantile Cases.
 Dart Vend.—Dart on Vendors and Purchasers.
 Das.—Dasent's Reports.
 Dav., or Davies.—Davies' King's Bench Reports.
 Dav. B. Soc.—Davis on Building Societies.
 Dav. El. & R.—Davis on Elections and Registration.
 Dav. Hawaii.—Davis' Hawaiian Reports.
 Dav. Just.—Davis on Justices of the Peace.
 Dav. Pat. Cas.—Davis' English Patent Cases.
 Dav. Poor L.—Davis on the Poor Laws.
 Dav. Prec. Conv.—Davidson's Precedents in Conveyancing.
 Dav. & M.—Davison & Merivale's Queen's Bench Reports.
 Daveis (U. S.)—Daveis' U. S. District Court Reports.
 Daw. Arr.—Dawes on Arrest in Civil Cases.
 Day Com. L. Pro.—Day's Common Law Procedure Acts.
 Day (Conn.)—Day's Connecticut Reports.
 Dayt. Surr.—Dayton on Surrogates.
 De G.—De Gex's English Bankruptcy Reports.
 De G. F. & J.—De Gex, Fisher & Jones' English Chancery Reports.
 De G. J. & S.—De Gex, Jones & Smith's English Chancery Reports.
 De G. M. & G.—De Gex, Macnaghten & Gordon's English Chancery Reports.
 De G. & J.—De Gex & Jones' English Chancery Reports.
 De G. & S.—De Gex & Smale's English Chancery Reports.
 Dea. & Sw.—Deane & Swabey's English Probate and Divorce Reports.
 Deac.—Deacon's English Bankruptcy Reports.
 Deac. Bankr.—Deacon on Bankruptcy.
 Deac. & C.—Deacon & Chitty's English Bankruptcy Reports.
 Deady (U. S.)—Deady's U. S. Circuit and District Court Reports.
 Dean Med. Jur.—Dean's Medical Jurisprudence.
 Deane, or Deane Ec.—Deane & Swabey's English Probate and Divorce Reports.
 Deane Conv.—Deane's Principles of Conveyancing.
 Dears.—Dearsley's Crown Cases Reserved.
 Dears. Cr. Pro.—Dearsly on Criminal Process.
 Dears. & B.—Dearsley & Bell's Crown Cases Reserved.
 Deas & And.—Deas and Anderson's Court of Session Reports.
 De Boism. Hall.—De Boismont on Hallucination.
 De Coly. Guar.—De Colyar on Guaranty and Suretyship.
 Deft.—Defendant.
 De H. Mil. L.—De Hart on Military Law.
 Del.—Delaware.
 Del. Ch.—Delaware Chancery Reports.
 Del. Cr.—Houston's Delaware Criminal Reports.
 Den. C. C.—Denison's Crown Cases Reserved.
 Den. (N. Y.) or Denio (N. Y.)—Denio's New York Reports.
 Den. & S. Pr. & Pro.—Denison & Scott on Practice and Procedure.
 Des. or Desaus. (S. C.)—Desaussure's South Carolina Chancery and Court of Appeals Reports.
 Desaul. Dict.—Desaulnier's *Dictionnaire*.
 Desty Cal. Cit.—Desty's California Citations.
 Desty Fed. Cit.—Desty's Federal Citations.
 Desty Fed. Pro.—Desty's Federal Procedures.
 Desty Sh. & Adm.—Desty on Shipping & Admiralty.
 Dev. (N. C.) Eq.—Devereux's North Carolina Equity Reports.
 Dev. (N. C.) L.—Devereux's North Carolina Law Reports.
 Dev. (U. S.)—Devereux's U. S. Court of Claims Reports.
 Dev. & B. (N. C.) Eq.—Devereux & Battle's North Carolina Equity Reports.
 Dev. & B. (N. C.) L.—Devereux & Battle's North Carolina Law Reports.
 Dic. Dom.—Dicey on the Law of Domicil.

Dic. Part.—Dicey on Parties to Actions.
 Dick.—Dickens' English Chancery Reports.
 Dick. Eq. Prec.—Dickinson's Equity Precedents.
 Dick. Just.—Dickenson's Justice.
 Dick. Qr. Sess.—Dickenson's Quarter Sessions Guide.
 Diet.—Dictionary.
 Dig.—Digest; Digest, or Pandects of Justinian.
 Digby Hist. R. P.—Digby's History of the Law of Real Property.
 Digby Shares—Digby's Sale and Transfer of Shares.
 Dill. Mun. B.—Dillon on the Law of Municipal Bonds.
 Dill. Mun. Corp.—Dillon on Municipal Corporations.
 Dill. (U. S.)—Dillon's U. S. Circuit Court Reports.
 Dirl.—Dirleton's Court of Session Decisions.
 Disn. (O.)—Disney's Cincinnati Superior Court Reports.
 Dix. Gen. Av.—Dixon's General Average.
 Dix. Mar. Ins.—Dixon on Marine Insurance.
 Dix. Part.—Dixon on Law of Partnership.
 Dix. Prob.—Dixon on Law of Probate.
 Dix. Sh.—Dixon's Law of Shipping.
 Dix. Subrog.—Dixon on Subrogation.
 Doct. & S.—Doctor & Student.
 Dod. Eng. L.—Doderidge's English Lawyer.
 Dodd & B. Prob. Pr.—Dodd & Brooks' Probate Court Practice.
 Dods.—Dodson's English Admiralty Reports.
 Domat—Domat on Civil Law.
 Domesd.—Domesday Book.
 Donn. Ch.—Donnelly's Chancery, English.
 Donn. Ir. L. Cts.—Donnell's Irish Land Court Reports.
 Doria Bankr.—Doria on Law and Practice in Bankruptcy.
 Doug.—Douglas' King's Bench Reports.
 Doug. El. Cas.—Douglas' Election Cases.
 Doug. (Mich.)—Douglass' Michigan Reports.
 Dow—Dow's House of Lords Cases.
 Dow. St. L.—Dowell's Stamp Duties and Stamp Laws.
 Dow & C.—Dow & Clark's House of Lords Cases.
 Dowl.—Dowling's Bail Court Reports.
 Dowl. N. S.—Dowling's Bail Court Reports, New Series.
 Dowl. Pr. C.—Dowling's English Practice Reports.
 Dowl. Pr. C. N. S.—Dowling's English Practice Reports, New Series.
 Dowl. & L.—Dowling & Lowndes' Bail Court Reports; Dowling & Lowndes English Practice Reports.
 Dowl. & Ry.—Dowling & Ryland's King's Bench Reports.
 Dowl. & Ry. M. C.—Dowling & Ryland's King's Bench Magistrate's Cases.
 Dowl. & Ry. N. P.—Dowling & Ryland's Nisi Prius Cases.
 Dr.—Debtor.
 Dr. & S.—Doctor & Student.
 Drake Att.—Drake on Attachments.
 Drake Jur.—Drake on Jurisdiction.
 Draper—Draper's Upper Canada Queen's Bench Reports.
 Draper Dow.—Draper on Dower.
 Drewry, or Drew.—Drewry's English Chancery Reports.

Drewry Cl. & Def.—Drewry's Forms of Claims and Defense.
 Drewry Inj.—Drewry on Injunctions.
 Drewry & S., or Drew. & S.—Drewry & Smale's English Chancery Reports.
 Drone Copyr.—Drone on Copyright.
 Dru., or Drury—Drury's Irish Chancery Reports.
 Dru. Sel. Cas.—Drury's Irish Chancery Select Cases.
 Dru. & W.—Drury & Walshe's Irish Chancery Reports.
 Dru. & War.—Drury & Warren's Irish Chancery Reports.
 Dub.—*Dubitatur*; it is doubted; it is doubtful.
 Dudley (Ga.)—Dudley's Georgia Superior Court Reports.
 Dudley (S. C.) Eq.—Dudley's South Carolina Equity Reports.
 Dudley (S. C.) L.—Dudley's South Carolina Law Reports.
 Duer Const.—Duer on Constitutional Jurisprudence.
 Duer M. Ins.—Duer on Marine Insurance.
 Duer (N. Y.)—Duer's New York City Superior Court Reports.
 Duer Repr.—Duer on Representations.
 Dugd. Orig.—Dugdale's *Origines Juridicales*.
 Duke Char. Uses.—Duke on Charitable Uses.
 Dun. Abr.—Dunlap's Abridgment.
 Dun. Adm. Pr.—Dunlap's Admiralty Practice.
 Dun. For.—Dunlap's Book of Forms.
 Dun. Pr.—Dunlap's Practice.
 Dunl., or Dun.—Dunlop, Bell & Murray's Court of Session Reports.
 Dupon. Const.—Duponceau on the Constitution.
 Dupon. Jur.—Duponceau on Jurisdiction.
 Durant. Dr. Tr.—Duranton, *Droit Francais*.
 Durie—Durie's Court of Session Reports.
 Durnf. & E.—Durnford & East's King's Bench Reports; Term Reports.
 Dutch. (N. J.)—Dutcher's New Jersey Reports.
 Duv. (Ky.)—Duvall's Kentucky Reports.
 Dwar. Stat.—Dwarris on Statutes.
 Dwight Ch. U.—Dwight on Charitable Uses.
 Dy., or Dyer—Dyer's King's Bench Reports.

E.

E.—Easter Term.
 E. C. L.—See Eng. Com. L.
 E. E. R.—See Eng. Eccl.
 E. g.—*Exempli gratia*; For example.
 E. L. & Eq.—See Eng. L. & Eq.
 E. T.—Easter Term.
 E. & A.—Spink's Ecclesiastical and Admiralty Reports.
 Eag. & Yo.—Eagle & Younge's Tithe Cases.
 East—East's King's Bench Reports.
 East P. C.—East's Pleas of the Crown.
 Ec. & Ad.—Spink's Ecclesiastical and Admiralty Reports.
 Eccl.—Ecclesiastical.
 Ed., or Edit.—Edition.
 Eden—Eden's English Chancery Reports.
 Eden Inj.—Eden on Injunctions.
 Eden Pen. L.—Eden's Principles of Penal Law
 Edg.—Edgar's Court of Session Reports.
 Edic.—*Edicto* by Justinian.
 Edm. Ex. Pr.—Edmund's Exchequer Practice.

- Edm. (N. Y.) Sel. Cas.—Edmond's Select New York Cases.
 Edw.—King Edward; 1 Edw. I. denotes the first year of the reign of King Edward I.
 Edw. Adm.—Edwards' English Admiralty Reports.
 Edw. Bailm.—Edwards on Bailments.
 Edw. Bills—Edwards on Bills.
 Edw. Fac. & Bro.—Edwards on Factors and Brokers.
 Edw. L. Dec.—Edwards' Leading Decisions.
 Edw. (N. Y.) Ch.—Edwards' New York Chancery and Supreme Court Reports.
 Edw. Par.—Edwards on Parties in Chancery.
 Edw. Rec.—Edwards on Receivers.
 Edw. Ref.—Edwards on Referees.
 El., B. & E.—Ellis, Blackburn & Ellis' King's Bench Reports.
 El., B. & S.—Ellis, Best & Smith's Queen's Bench Reports.
 El. Dr. & Cr.—Ellis on Debtor and Creditor.
 El. Ins.—Ellis on Insurance.
 El. & B.—Ellis & Blackburn's Queen's Bench Reports.
 El. & E.—Ellis & Ellis' Queen's Bench Reports.
 Elchie—Elchie's Court of Sessions Decisions.
 Elchie F.—Elchie, Faculty Collection.
 Elec.—Elections.
 Eliz.—Elizabeth; as 11 Eliz. c. 9.
 Elm. Dig.—Elmer's New Jersey Digest.
 Elm. Pr. Lun.—Elmer on the Practice in Lunacy.
 Elph. Cour.—Elphinstone's Conveyancing.
 Elt. Com.—Elton on Commons and Waste Lands.
 Elt. Copyh.—Elton on the Laws of Copyholds.
 Elw. Med. Jur.—Elwell's Medical Jurisprudence.
 Emer. Ins.—Emerigon on Insurances.
 Encycl.—Encyclopedia.
 Eng. Adm. R.—English Admiralty Reports.
 Eng. Ch. R.—English Chancery Reports.
 Eng. Com. L.—English Common Law Reports.
 Eng. Eccl.—English Ecclesiastical Reports.
 Eng. Exch.—English Exchequer Reports.
 Eng. L. & Eq.—English Law and Equity Reports.
 Eng. Railw. Cas.—English Railway and Canal Cases.
 Eng. Rep.—English Reports, Moak's Notes.
 Eq. Cas. Abr.—Equity Cases Abridged.
 Eq. Draft.—Equity Draftsman.
 Eq. R.—Equity Reports.
 Ersk. Inst.—Erskine's Institutes of the Law of Scotland.
 Ersk. Prin.—Erskine's Principles of the Law of Scotland.
 Esp. Ev.—Espinasse on Evidence.
 Esp. N. P.—Espinasse's *Nisi Prius* Reports.
 Esp. Pen. Ev.—Espinasse on Penal Evidence.
 Est. Pl. & For.—Estie's Pleadings and Forms.
 Et al.—*Et alii*; and others.
 Eunom.—Wynne's *Eunomus*.
 Ev., or Evid.—Evidence.
 Ev. Pl.—Evans on Pleading.
 Ev. Pr. & A.—Evans on the Law of Principal and Agent.
 Ev. Stat.—Evans' Collection of Statute.
 Ew. Just.—Ewing's Justice.
 Ewell Fixt.—Ewell on the Law of Fixtures.
 Ewell L. Cas.—Ewell's Leading Cases.
 Ex., or Exr.—Executor.
 Ex. D.—Law Reports, Exchequer Division.
 Exch.—Exchequer Reports.
 Exec.—Execution.
 Exp.—*Ex parte*.
 Eyre—Eyre's King's Bench Reports.
- F.**
- F.—*See* Fitz. Abr.
 F. B. C.—*See* Fonb. B. C.
 F. C.—Faculty of Advocates Collection, Court of Session Cases.
 F. N. B.—*See* Fitz. N. B.
 F. & F.—*See* Fost. & F.
 F. & S.—*See* Fox & S.
 Fac. Coll.—Faculty of Advocates Collection, Court of Session Cases.
 Fairf. (Me.)—Fairfield's Maine Reports.
 Falc.—Falconer's Court of Session Reports.
 Falc. & F.—Falconer & Fitzherbert's Election Cases.
 Farr.—Farresley's King's Bench Reports.
 Farr. Man. Const.—Farrar's Manual of the Constitution.
 Farr Med. Jur.—Farr's Elements of Medical Jurisprudence.
 Farw. Pow.—Farwell on Powers.
 Fawc. L. & T.—Fawcett's Law of Landlord and Tenant.
 Fearn, or Fearn Rem.—Fearn on Contingent Remainders and Executory Devises.
 Fed.—The Federalist.
 Fed. Rep.—The Federal Reporter.
 Fell Mer. Guar.—Fell on Mercantile Guarantees.
 Ferard Fixt.—Amos & Ferard on Fixtures.
 Ferg.—Ferguson's Consistorial Court Reports.
 Ferg. Mar. & D.—Fergusson on Marriage and Divorce.
 Ferr. Hist. Civ. L.—Ferriere's History of the Civil Law.
 Fess. Pat.—Fessenden on Patents.
 Ff.—Pandects of Justinian.
 Fi. Fa.—*Fieri Facias*.
 Field Com. L.—Field on the Common Law of England.
 Field Corp.—Field on Corporations.
 Field Dam.—Field on Damages.
 Field. Pen. L.—Fielding on Penal Laws.
 Fin., or Finch—Finch's English Chancery Reports.
 Finch Law—Finch's Law.
 Finch Prec.—Finch's Precedents in Chancery.
 Finl. L. C.—Finlayson's Leading Cases on Pleading.
 Fish. Copyh.—Fisher on Copyholds.
 Fish. Cr. Dig.—Fisher's English Criminal Digest.
 Fish. Dig.—Fisher's English Digest.
 Fish. Mort.—Fisher's Law of Mortgage.
 Fish. Pat. Cas.—Fisher's U. S. Circuit Court Patent Cases.
 Fish. Pat. Dig.—Fisher's Patent Digest.
 Fish. Pat. Rep.—Fisher's Patent Reports.
 Fish. Pr. Cas.—Fisher's U. S. Prize Cases.
 Fitz. Abr.—Fitzherbert's Abridgment.
 Fitz. N. B.—Fitzherbert's *Natura Brevium*.
 Fitz G.—Fitz Gibbon's English Reports.
 Fl.—Fleta, *Commentarius Juris Anglicani*.
 Fla.—Florida; Florida Reports.

- Flau. & K.**—Flanagan & Kelly's Irish Rolls Court Reports.
Fland. Ch. J.—Flanders' Lives of the Chief Justices.
Fland. Ins.—Flanders on Insurance.
Fland. Mar. L.—Flanders on Maritime Law.
Fland. Sh.—Flanders on Shipping.
Fletch. Trust.—Fletcher on Trustees.
Flood Sl. & L.—Flood on Slander and Libel.
Flood Wills—Flood on Wills of Personal Property.
Floyer Proc. Pr.—Floyer on Proctor's Practice.
Foard Mer. Sh.—Foard on the Law of Merchant Shipping.
Fol.—Folio; Foley's Poor Law Reports.
Fol. Dict.—Kames & Woodhouslee's Court of Session Cases Dictionary.
Folk. Sl. & L.—Folkard on Slander and Libel.
Fonb., or Fonb. Eq.—Fonblanque on Equity.
Fonb. B. C.—Fonblanque's Bankruptcy Cases.
Foot Pr. Int. Jur.—Foote on Private International Jurisprudence.
Forbes—Forbes' Court of Session Reports.
Forbes Bills—Forbes on Bills of Exchange.
Forbes Inst.—Forbes' Institute of Scottish Law.
Form. Pla.—Brown's *Formula Placitandi*.
Forrest, or Forr.—Forrest's Exchequer Reports.
Forrester, or Forr. Ch.—Forrester's English Chancery Reports.
Forsyth Comp. Cr.—Forsyth on Composition with Creditors.
Forsyth Const. L.—Forsyth on Constitutional Law.
Forsyth Hist. Tr. J.—Forsyth's History of Trial by Jury.
Forsyth Inf.—Forsyth on Infants.
Fortes.—Fortescue's English Reports.
Fortes. de Laud.—*Fortescue de Laudibus Legum Angliæ*.
Forum—The Forum.
Foss Biog. Jur.—Foss' *Biographia Juridica*.
Fost.—Foster's English Reports and Crown Law.
Fost. C. L.—Foster's Crown Law.
Fost. Jt. Own.—Foster on Law of Joint Ownership.
Fost. (N. H.)—Foster's New Hampshire Reports.
Fost. Sci. Fa.—Foster on *Scire Facias*.
Fost. & F.—Foster & Finlason's *Nisi Prius* Cases.
Foulkes Ac. L.—Foulkes on Actions at Law.
Fount.—Fountainhall's Scotch Court of Session Reports.
Fox Part. Dig.—Fox's Partnership Digest.
Fox & S.—Fox & Smith's Irish King's Bench and Court of Error Reports.
Fr.—Fragment; Law, in Titles of Pandects of Justinian.
Fr. Max., or Fran. Max.—Francis' Maxims.
Fras. Dom. Rel.—Fraser on Personal and Domestic Relations.
Fras. El. Cas.—Fraser's Election Cases.
Fraz. Adm.—Frazer's Scottish Admiralty Reports.
Freem.—Freeman's King's Bench and Chancery Reports.
Freem. Ch.—Freeman's English Chancery Reports.
Freem. Co-ten. & P.—Freeman on Co-tenancy and Partition.
Freem. Exec.—Freeman on Executions.
Freem. (Ill.)—Freeman's Illinois Reports.
Freem. Judg.—Freeman on Judgments.
Freem. (Miss.)—Freeman's Mississippi Superior Court of Chancery Reports.
Freem. Pr.—Freeman's Illinois Practice.
Fry Lun. L.—Fry on Lunacy Laws.
Fry Spec. Perf.—Fry on Specific Performance of Contracts.
Fult. Man.—Fulton's Manual of Constitutional History.
- G.**
- G.**—King George; 1 G. I., denotes the first year of the reign of King George I.
G. & J.—See Glyn & J.
Ga.—Georgia; Georgia Reports.
Ga. Dec.—Georgia Superior Courts Decisions.
Gaius—Gaius' Institutes.
Gaius Com.—Gaius' Commentaries on Roman Laws.
Gaius El.—Gaius' Elements of Roman Laws.
Gale—Gale's Exchequer Reports.
Gale Eas.—Gale on Easements.
Gale & D.—Gale & Davison's Queen's Bench Reports.
Gale & W.—Gale & Whatley on Easements.
Gall. (U. S.), or Gallis. (U. S.)—Gallison's U. S. Circuit Court Reports.
Garde Ev.—Garde on Rules of Evidence.
Gardn. Int. L.—Gardner's Institutes of International Law.
Gaz. Bank. Dig.—Gazzam's Bankruptcy Digest.
Geo.—King George; see G.
Geo. Lib.—George on Criminal Libel.
Ger. Real Est.—Gerard on Titles to Real Estate.
Gibb. Fixt.—Gibbons on Fixtures.
Gibs. Cod.—Gibson's *Codex Juris Ecclesiastici Anglicani*.
Giff.—Giffard's English Chancery Reports.
Gilb.—Gilbert's English Common Pleas Reports.
Gilb. Ch.—Gilbert's English Chancery Reports.
Gilb. Cas.—Gilbert's Cases in Law and Equity.
Gilb. Ch. Pr.—Gilbert's Chancery Practice.
Gilb. Dev.—Gilbert on Devises.
Gilb. Ev.—Loffts' Gilbert on Evidence.
Gilb. Exec.—Gilbert on Executions.
Gilb. For. Rom.—Gilbert's *Forum Romanum*.
Gilb. K. B.—Gilbert's English King's Bench Reports.
Gilb. Lex Præt.—Gilbert's *Lex Prætoria*.
Gilb. Rem.—Gilbert on Remainders.
Gilb. Rents—Gilbert on Rents.
Gilb. Repl.—Gilbert on Replevin.
Gilb. Ten.—Gilbert on Tenures.
Gilb. U. & T.—Gilbert on Uses and Trusts.
Gill (Md.)—Gill's Maryland Reports.
Gill & J. (Md.)—Gill & Johnson's Maryland Reports.
Gilm.—Gilmour's Court of Session Reports.
Gilm. (Ill.), or Gilman (Ill.)—Gilman's Illinois Reports.
Gilm. (Va.), or Gilmer (Va.)—Gilmer's Virginia Reports.
Gilm. & F.—Gilmour & Falconer's Reports.
Gilp. (U. S.)—Gilpin's U. S. District Court Reports.
Gl.—*Glossa*; a gloss; an interpretation.
Glanv.—Glanville de *Legibus*.

- Glanv. El. Cas.—Glanville's English Election Cases.
 Glasc.—Glascock's Irish Reports.
 Glassf. Ev.—Glassford on Evidence.
 Glen Pub. H.—Glen on the Public Health.
 Glov. Mun. Corp.—Glover on Municipal Corporations.
 Glyn & J.—Glyn & Jameson's English Bankruptcy Cases.
 Godb.—Godbolt's English Reports.
 Godd. Easem.—Goddard on Easements.
 Godef. Dig.—Godefroi's Digest of the Law of Trusts and Trustees.
 Godef. & S. R'y Co.—Godefroi & Short's Law of Railway Companies.
 Godolph.—Godolphin's Abridgment of Ecclesiastical Law.
 Godolph. Adm.—Godolphin on Admiralty Jurisdiction.
 Gods. Pat.—Godson on Patents.
 Goirand Fr. Co.—Goirand's French Code of Commerce.
 Golds. Eq.—Goldsmith's Doctrine and Practice of Equity.
 Good. Pat.—Goodeve's Letters Patent.
 Gord. Dig.—Gordon's Digest of United States Laws.
 Gosf.—Gosford's Court of Session Reports.
 Gould Pl.—Gould on Pleading.
 Gouldsb.—Gouldsbrough's English Reports.
 Gow, or Gow N. P.—Gow's Nisi Prius Cases.
 Gow Part.—Gow on Partnership.
 Grady Fixt.—Grady on Fixtures.
 Grah. Jur.—Graham on Jurisdiction.
 Grah. Pr.—Graham's Practice.
 Grah. & W. New Tr.—Graham & Waterman on New Trials.
 Grand Coust. Norm.—Grand Coustoumier of Normandy.
 Grant Bank.—Grant on Bankers and Banking Companies.
 Grant Cas., or Grant (Pa.)—Grant's Pennsylvania Cases.
 Grant Ch. Pr.—Grant's Chancery Practice.
 Grant Corp.—Grant on Corporations.
 Grant U. C. Ch.—Grant's Upper Canada Chancery Reports.
 Gratt. (Va.)—Grattan's Virginia Reports.
 Gray (Mass.)—Gray's Massachusetts Reports.
 Grayd. Conv.—Graydon's Forms of Conveyancing.
 Green Br. U. V.—Green's Brice's *Ultra Vires*.
 Green C. E. (N. J.)—C. E. Green's New Jersey Chancery Reports.
 Green Cr. Cas.—Green's Scottish Criminal Cases.
 Green Cr. L. Rep.—Green's Criminal Law Reports.
 Green (N. J.) Ch.—Green's New Jersey Chancery Reports.
 Green (N. J.) L.—Green's New Jersey Law Reports.
 Greene (Iowa)—Greene's Iowa Reports.
 Greenl. Cru. Dig.—Greenleaf's Cruise's Digest.
 Greenl. Evid.—Greenleaf on Evidence.
 Greenl. (Me.)—Greenleaf's Maine Reports.
 Greenl. Ov. Cas.—Greenleaf's Overruled Cases.
 Greenl. Test. Ev.—Greenleaf's Testimony of the Evangelists.
 Greenw. Conv.—Greenwood's Manual of Conveyancing.
 Greenw. Courts—Greenwood on Courts.
- Gresl. Eq. Ev.—Gresley's Equity Evidence.
 Griff. Inst. Eq.—Griffith's Institutes of Equity.
 Griff. L. R.—Griffith's Law Register.
 Gro. B. et P.—*Grotius de Jure Belli et Pacis*.
 Gundry—Gundry Manuscripts, in Lincoln's Inn Library.
 Güt. Brac.—Güterbock on Bracton.
 Guth. Sher. Cas.—Guthrie's Scottish Sheriff Court Cases.
 Guy Med. Jur.—Guy on Medical Jurisprudence
 Gwill., or Gwm.—Gwillim's Tithe Cases.
 Gwyn. Sher.—Gwynne on Sheriffs.
- ## H.
- H.—Hilary Term; King Henry; 1 H. I., denotes the first year of the reign of King Henry I.
 H. Bl.—Henry Blackstone's Common Pleas and Exchequer Chamber Reports.
 H. L.—House of Lords.
 H. P. C.—Hale's Pleas of the Crown.
 H. & B.—See Huds. & B.
 H. & C.—See Hurlst. & C.
 H. & G.—See Har. & G.
 H. & J.—See Har. & J.
 H. & M.—See Har. & M.; Hem. & M.; Hen. & M.
 H. & N.—See Hurlst. & N.
 Hab. Corp.—*Habeas Corpus*.
 Hadd.—Haddington's Court of Session Reports.
 Hadd. Adm.—Haddan's Admiralty Jurisdiction.
 Hagg. Adm.—Haggard's English Admiralty Reports.
 Hagg. Cons.—Haggard's Consistory Court Reports.
 Hagg. Ec.—Haggard's Ecclesiastical Reports.
 Hailes—Hailes' Court of Session Decisions.
 Hale C. L.—Hale's History of the Common Law.
 Hale Jur. H. L.—Hale's Jurisdiction of the House of Lords.
 Hale P. C.—Hale's Pleas of the Crown.
 Hall Adm. Pr.—Hall's Admiralty Practice.
 Hall Com.—Hall on Commons.
 Hall L. J.—See Am. L. J.
 Hall (N. Y.)—Hall's New York City Superior Court Reports.
 Hall Neut.—Hall on the Rights and Duties of Neutrals.
 Hall R. Cr.—Hall on the Rights of the Crown.
 Hall & T.—Hall & Twell's English Chancery Reports.
 Hallam Const. Hist.—Hallam's Constitutional History of England.
 Halst. Dig.—Halstead's Digest.
 Halst. Ev.—Halstead's Digest of the Law of Evidence.
 Halst. (N. J.) Ch.—Halsted's New Jersey Chancery Reports.
 Halst. (N. J.) L.—Halsted's New Jersey Law Reports.
 Ham., A. & O.—Hamerton, Allen & Otter's English Magistrates' Cases.
 Hamm. F. Ins.—Hammond on Fire Insurance.
 Hamm. Ins.—Hammond on Insanity in its Medico-Legal Relations.
 Hamm. N. P.—Hammond's Nisi Prius.
 Hamm. (Ohio)—Hammond's Ohio Reports.
 Hamm. Part.—Hammond on Parties to Actions.
 Hamm. Pl.—Hammond's Analysis of the Principles of Pleading.

- Han. Horse**—Hanover on the Law of Horses.
Hand Ch. Pr.—Hand's Chancery Practice.
Hand Cr. Pr.—Hand's Crown Practice.
Hand F. & R.—Hand on Fines and Recoveries.
Hand Pat.—Hand on Patents.
Hanly—Handy's Cincinnati Superior Court Reports.
Hamm.—Hammer's Lord Kenyon's Notes.
Hann. N. B.—Hannay's New Brunswick Reports.
Hans.—Hansard's Entries.
Hans. S. D.—Hanson on Succession Duties.
Har. & G. (Md.)—Harris & Gill's Maryland Reports.
Har. & J. (Md.)—Harris & Johnson's Maryland Reports.
Har. & M. (Md.)—Harris & McHenry's Maryland Provincial Court and Court of Appeals Reports.
Harc.—Harcarse's Court of Session Decisions.
Hard.—Hardres' Exchequer Reports.
Hard. (Ky.)—Hardin's Kentucky Reports.
Hardc. El. Pet.—Hardcastle on Law and Practice of Election Petitions.
Hardc. Stat. L.—Hardcastle on Statutory Law.
Hare—Hare's English Chancery Reports.
Hare Disc.—Hare on Discovery.
Hare El. Rep.—Hare on the Election of Representatives.
Hare & W.—Hare & Wallace's American Leading Cases.
Harg. Coll.—Hargrave's Judicial Arguments and Collection.
Harg. Law Tr.—Hargrave's Law Tracts.
Harg. St. Tr.—Hargrave's State Trials.
Harp. (S. C.)—Harper's South Carolina Constitutional Court Reports.
Harp. (S. C.) Eq.—Harper's South Carolina Equity Reports.
Harr. Cr. L.—Harris on Principles of Criminal Law.
Harr. (Del.)—Harrington's Delaware Reports.
Harr. Dig.—Harrison's Digest of Common Law Reports.
Harr. Ent.—Harris' Entries.
Harr. Hints Adv.—Harris' Hints on Advocacy.
Harr. (Mich.)—Harrington's Michigan Chancery Reports.
Harr. Mun. Man.—Harrison's Municipal Manual.
Harr. (N. J.)—Harrison's New Jersey Reports.
Harr. R. L.—Harris' Elements of Roman Law.
Harr. & G. (Md.)—Harris & Gill's Maryland Reports.
Harr. & H. Mun. U. C.—Harrison & Hodgkin's Upper Canada Municipal Reports.
Harr. & J. (Md.)—Harris & Johnson's Maryland Reports.
Harr. & M. (Md.)—Harris & McHenry's Maryland Provincial Court and Court of Appeals Reports.
Harr. & R.—Harrison & Rutherford's Common Pleas Reports.
Harr. & W.—Harrison & Wollaston's King's Bench Reports.
Hart. Dig.—Hartley's Digest.
Harw. Nav. Ct. M.—Harwood's Naval Court Martial.
Hasl. Med. Jur.—Haslam's Medical Jurisprudence.
Hav.—Haviland's Prince Edward Island Reports.
Hawaii—Hawaii (Sandwich Island) Reports.
Hawk. Co. Litt.—Hawkins' Coke upon Littleton.
Hawk. P. C.—Hawkins' Pleas of the Crown.
Hawk. Wills—Hawkins on Construction of Wills.
Hawks (N. C.)—Hawks' North Carolina Reports.
Hawl. Cr. Rep.—Hawley's American Criminal Reports.
Hay Dec.—Hay's Scotch Decisions.
Hay & Marr.—Hay & Marriott's English Admiralty Reports.
Hayes—Hayes' Irish Exchequer Reports.
Hayes Conv.—Hayes' Introduction to Conveyancing.
Hayes Lim.—Hayes on Limitations.
Hayes & J.—Hayes & Jones' Irish Exchequer Reports.
Hayes & J. Wills—Hayes & Jarman on Wills.
Haynes Ch. Pr.—Haynes' Practice of the Chancery Division.
Haynes Eq.—Haynes' Outlines of Equity.
Hays Real Prop.—Hays on Real Property.
Hayw. Juris. & Pr.—Haywood on Jurisdiction and Practice of the County Courts.
Hayw. (N. C.)—Haywood's North Carolina Superior Courts of Law and Equity Reports.
Hayw. (Tenn.)—Haywood's Tennessee Reports.
Haz. Reg.—Hazzard's Register.
Head (Tenn.)—Head's Tennessee Reports.
Heal. Art. Ass.—Healy on Articles of Association.
Heard Cr. L.—Heard on Criminal Law.
Heard Cr. Pl.—Heard on Principles of Criminal Pleading.
Heard Pl.—Heard on Principles of Pleading in Civil Actions.
Heath Max.—Heath's Maxims.
Heisk. (Tenn.)—Heiskell's Tennessee Reports.
Hemm. & M.—Hemming & Miller's English Chancery Reports.
Hempst.—Hempstead's U. S. Circuit Court and Arkansas Territorial Court Reports.
Hen.—King Henry; see H.
Hen. Bl.—Henry Blackstone's Common Pleas and Exchequer Chamber Reports.
Hen. For. L.—Henry on Foreign Law.
Hen. Just.—Hening's Virginia Justice of the Peace.
Hen. & M. (Va.)—Hening & Mumford's Virginia Reports.
Hent For. Bl.—Hent's Forms and Use of Blanks.
Herm. Ch. Mort.—Herman on Chattel Mortgages.
Herm. Estop.—Herman on Estoppel.
Herm. Exec.—Herman on Executions.
Herm. Mort.—Herman on Mortgages and Vendors Liens.
Herne Char. Us.—Herne on Charitable Uses.
Herne Pl.—Herne's Pleader.
Het.—Hetley's English Common Pleas Reports.
Heyl Com. Dig.—Heyl's Commercial Digest.
Heyw. El.—Heywood on Elections.
Higg. Pat. Dig.—Higgins' Digest of Patent Cases.
Higg. Waterc.—Higgins on Watercourses.
High Extr. Rem.—High on Extraordinary Remedies.
High Inj.—High on Injunctions.
High Rec.—High on Receivers.
Highm. Bail—Highmore on Bail.
Highm. Lun.—Highmore on Lunacy.

- Highm. Mortm.—Highmore on Mortmain.
 Hil. T.—Hilary Term.
 Hill Ch. Pr.—Hill's Chancery Practice.
 Hill Fixt.—Hill on Fixtures.
 Hill (N. Y.)—Hill's New York Reports.
 Hill (S. C.)—Hill's South Carolina Reports.
 Hill (S. C.) Ch.—Hill's South Carolina Chancery Reports.
 Hill Trust.—Hill on Trustees.
 Hill & D. (N. Y.)—Lalor's Supplement to Hill & Denio's New York Reports.
 Hilliard Am. Jur.—Hilliard on American Jurisprudence.
 Hilliard Am. L.—Hilliard on American Law.
 Hilliard Bankr.—Hilliard on Bankruptcy.
 Hilliard Cont.—Hilliard on Contracts.
 Hilliard Inj.—Hilliard on Injunctions.
 Hilliard Mort.—Hilliard on Mortgages.
 Hilliard New Tr.—Hilliard on New Trials.
 Hilliard Real Prop.—Hilliard on Real Property.
 Hilliard Rem. Torts—Hilliard on Remedies for Torts.
 Hilliard Sales—Hilliard on Sales of Personal Property.
 Hilliard Tax.—Hilliard on the Law of Taxation.
 Hilliard Torts—Hilliard on the Law of Torts.
 Hilliard Vend. & P.—Hilliard on Vendors and Purchasers.
 Hilt. (N. Y.)—Hilton's New York Common Pleas Reports.
 Hind Pr.—Hind's Practice.
 Hindm. Pat.—Hindmarch on Patents.
 Hob.—Hobart's King's Bench Reports.
 Hodg.—Hodges' Common Pleas Reports.
 Hodg. El.—Hodgins on Elections.
 Hodg. Railw.—Hodges on Railways.
 Hoffm. Ch. Pr.—Hoffman's Chancery Practice.
 Hoffm. Land Cas.—Hoffman's U. S. District Court Land Cases.
 Hoffm. Leg. St.—Hoffman's Legal Studies.
 Hoffm. Mas. Ch.—Hoffman's Master in Chancery.
 Hoffm. (N. Y.) Ch.—Hoffman's New York Chancery Reports.
 Hoffm. Prov. Rem.—Hoffman's Provisional Remedies.
 Hoffm. Ref.—Hoffman on Referees.
 Hog.—Hogan's Irish Rolls Court Reports.
 Hog. (Pa.) St. Tr.—Hogan's Pennsylvania State Trials.
 Holc. Dig.—Holcombe's Digest.
 Holc. Dr. & Cr.—Holcombe on the Law of Debtor and Creditor.
 Holc. Eq. Jur.—Holcombe's Equity Jurisprudence.
 Holc. Lead. Cas.—Holcombe's Leading Cases on Commercial Law.
 Holl. Comp. D.—Holland on Composition Deeds, &c.
 Holl. F. L.—Holland on the Form of the Law.
 Holl. Jur.—Holland's Elements of Jurisprudence.
 Holme Com. L.—Holme's Common Law.
 Holme & D. Pr.—Holme & Disbrow's Practice.
 Holmes (U. S.)—Holmes' U. S. Circuit Court Reports.
 Holt—Holt's King's Bench Reports.
 Holt Lib.—Holt on the Law of Libels.
 Holt N. P.—Holt's Nisi Prius Reports.
 Holt Nav.—Holt on Navigation.
 Holt Sh.—Holt on Shipping.
 Holth. L. Dict.—Holthouse's Law Dictionary.
 Home—Clerk Home's Court of Session Reports.
 Hood Exr.—Hood on Executors.
 Hope—Thomas Hope's Court of Session Reports.
 Hopk. Adm.—Hopkinson's Admiralty Reports.
 Hopk. Av.—Hopkins' Handbook of Average.
 Hopk. (N. Y.) Ch.—Hopkins' New York Chancery Reports.
 Hopw. & C.—Hopwood & Coltman's English Reports, Registration Appeal Cases.
 Hopw. & P.—Hopwood & Philbrick's English Reports, Registration Appeal Cases.
 Horn & H.—Horn & Hurlstone's Exchequer Reports.
 Horne Mir.—Mirrour of Justices.
 Horr. & T. Self Def.—Horrigan & Thompson's Self Defence Cases.
 Houck Nav. R.—Houck on the law of Navigable Rivers.
 Hough Am. Const.—Hough's American Constitutions.
 Hough Cts. Mart.—Hough on Courts Martial.
 House of L.—House of Lords.
 Houst. Cr. Cas.—See Del. Cr.
 Houst. Del.—Houston's Delaware Reports.
 Houst. St. in Tr.—Houston's Principles of the Law of Stoppage *in Transitu*.
 Hov. Fr.—Hovenden on Frauds.
 Hov. Sup. Ves.—Hovenden's Supplement to Vesey.
 How. (Miss.)—Howard's Mississippi Reports.
 How. (N. Y.) App. Cas.—Howard's New York Court of Appeals Cases.
 How. (N. Y.) Pr.—Howard's New York Practice Reports.
 How. Prob. Pr.—Howell on the Law and Practice as to Probate, &c., in Surrogates' Courts.
 How. St. Tr.—Howell's State Trials.
 How. (U. S.)—Howard's United States Supreme Court Reports.
 Howe Pr.—Howe's Massachusetts Practice.
 Hows. Pat.—Howsen on Patents.
 Hubb. Suc.—Hubback on Successions.
 Huds. L. & S. D.—Hudson on Legacy and Succession Duties.
 Huds. & B.—Hudson & Brooke's Irish King's Bench Reports.
 Hugh Abr.—Hugh's Abridgment.
 Hugh. Ent.—Hughes' Entries.
 Hugh. Ins.—Hughes on Insurance.
 Hugh. (Ky.)—Hughes' Kentucky Reports.
 Hugh. (U. S.)—Hughes' U. S. Circuit Court Reports.
 Hull. Costs—Hullock on Costs.
 Hult. Convic.—Hulton on Convictions.
 Hume—Hume's Court of Session Decisions.
 Hume Cr. L.—Hume's Commentaries on Criminal Law of Scotland.
 Humph. Prec.—Humphrey's Precedents.
 Humph. (Tenn.)—Humphrey's Tennessee Reports.
 Hun (N. Y.)—Hun's New York Reports.
 Hunt Bound.—Hunt on Boundaries, Fences and Shores.
 Hunt. Eq.—Hunter's Suit in Equity.
 Hunt Fraud. Conv.—Hunt on the Law of Fraudulent Conveyances.
 Hunt. L. & T.—Hunter on Landlord and Tenant.
 Hunt. Rom. L.—Hunter on Roman Law.

Hurd Fr. & Bond.—Hurd's Law of Freedom and Bondage.
 Hurd Hab. Corp.—Hurd on *Habeas Corpus*.
 Hurd Pers. Lib.—Hurd on Personal Liberty.
 Hurlst. & C.—Hurlstone & Coltman's Exchequer Reports.
 Hurlst. & G.—Hurlstone & Gordon's Exchequer Reports.
 Hurlst. & N.—Hurlstone & Norman's Exchequer Reports.
 Hurlst. & W.—Hurlstone & Walmsley's Exchequer Reports.
 Husb. Mar. W.—Husband on the Law of Married Women.
 Hust. Land Tit.—Huston on Land Titles.
 Hutch. Carr.—Hutchinson on Carriers.
 Hutt.—Hutton's Common Pleas Reports.

I.

I. J. C.—Irvine's Justiciary Court Cases.
 I. O. U.—I owe you.
 I. R. C. L.—Irish Common Law Reports.
 I. R. Eq.—Irish Equity Reports.
 Ib.—*Ibidem*; the very same.
 Id.—*Idem*; the same.
 Idaho—Idaho Reports.
 Igleh. Pl. & Pr.—Iglehardt's Pleading and Practice.
 Ill.—Illinois; Illinois Reports.
 Imp. Pl.—Impey's Pleader.
 Imp. Pr. C. P.—Impey's Practice in Common Pleas.
 Imp. Pr. K. B.—Impey's Practice in King's Bench.
 Imp. Sh.—Impey on Sheriffs and Coroners.
 In t.—*In fine*; at the end of.
 In pr.—*In principio*; at the beginning.
 Ind.—Indiana; Indiana Reports; Index.
 Ind. Com. L.—Indermaur on Principles of the Common Law.
 Inf.—*Infra*; below.
 Ing. Dig.—Ingersoll's Digest of United States Laws.
 Ing. Hab. Corp.—Ingersoll on *Habeas Corpus*.
 Ingr. Comp.—Ingram on Compensation for Land Taken.
 Ingr. Insolv.—Ingraham on Insolvency.
 Ins. L. J.—Insurance Law Journal.
 Inst.—Institutes. When preceded by a number, denotes Coke's Institutes; when followed by numbers, denotes the Institutes of Justinian.
 Int. Rev. Rec.—Internal Revenue Record and Customs Journal.
 Iowa—Iowa Reports.
 Ir. C. L.—Irish Common Law Reports.
 Ir. Ch.—Irish Chancery Reports.
 Ir. Eq.—Irish Equity Reports.
 Ir. Jur.—Irish Jurist.
 Ir. L.—Irish Law Reports.
 Ir. L. T.—Irish Law Times.
 Ired. (N. C.) Eq.—Iredell's North Carolina Equity Reports.
 Ired. (N. C.) L.—Iredell's North Carolina Law Reports.
 Irvine, or Irv. Just.—Irvine's Justiciary Court Cases.

J.

J.—Judge; Justice.
 J. J. Marsh. (Ky.)—J. J. Marshall's Kentucky Reports.

J. P.—Justice of the Peace.
 J. Kel.—J. Kelyng's King's Bench Reports.
 J. & W.—See Jac. & W.
 Jac.—King James; 1 Jac. I. denotes the first year of the reign of King James I.; Jacob's English Chancery Reports.
 Jac. Dict.—Jacob's Law Dictionary.
 Jac. Fish. Dig.—Jacob's Fishers' Digest.
 Jac. Lex Mer.—Jacob's *Lex Mercatoria*.
 Jac. & W.—Jacob & Walker's English Chancery Reports.
 Jack. Pl.—Jackson on Pleading.
 James—James' Nova Scotia Reports.
 James. Const. Conv.—Jameson's Constitutional Convention.
 James Mer. Sh.—James on Merchant Ships and Seamen.
 James Salv.—James on the Law of Salvage.
 Jarm. Ch. Pr.—Jarman's Chancery Practice.
 Jarm. Wills—Jarman on Wills.
 Jctus.—*Jurisconsultus*.
 Jebb Cr. Cas.—Jebb's Irish Crown Cases.
 Jebb & B.—Jebb & Bourke's Irish Queen's Bench Reports.
 Jebb & S.—Jebb & Symes' Irish Queen's Bench Reports.
 Jeff. Man.—Jefferson's Manual of Parliamentary Practice.
 Jeff. (Va.)—Jefferson's Virginia General Court Reports.
 Jenk., or Jenk. Cent.—Jenkins' Exchequer Reports.
 Jer. Carr.—Jeremy on the Law of Carriers.
 Jer. Eq. Jur.—Jeremy's Equity Jurisdiction of the High Court of Chancery.
 Jervis Cor.—Jervis on the Office and Duties of Coroners.
 Johns. Bills—Johnson on Bills, Notes and Checks.
 Johns. Ch.—Johnson's English Chancery Reports.
 Johns. Ec. Law.—Johnson's Ecclesiastical Law.
 Johns. (N. Y.)—Johnson's New York Reports.
 Johns. (N. Y.) Cas.—Johnson's New York Cases.
 Johns. (N. Y.) Ch.—Johnson's New York Chancery Reports.
 Johns. Pat.—Johnson's Patentees' Manual.
 Johns. & H.—Johnson & Heming's English Chancery Reports.
 Jones Bailm.—Jones on Bailments.
 Jones Chat. M.—Jones on Mortgages of Personal Property.
 Jones Mort.—Jones on Mortgages of Real Property.
 Jones Ir.—Jones' Irish Exchequer Reports.
 Jones (N. C.) Eq.—Jones' North Carolina Equity Reports.
 Jones (N. C.) L.—Jones' North Carolina Law Reports.
 Jones Presc.—Jones on Prescription.
 Jones Railr. Sec.—Jones on the Law of Railroad and other Corporate Securities.
 Jones Salv.—Jones on Salvage.
 Jones, T., or 2 Jones—T. Jones' King's Bench and Common Pleas Reports.
 Jones (U. C.)—Jones' Upper Canada Common Pleas Reports.
 Jones, W., or 1 Jones—W. Jones' King's Bench and Common Pleas Reports.
 Jones & C.—Jones & Carey's Irish Exchequer Reports.

- Jones & La T.—Jones & La Touche's Irish Chancery Reports.
 Jones & S. (N. Y.)—Jones & Spencer's New York City Superior Court Reports.
 Joy Ch. Jur.—Joy on Challenge to Jurors.
 Joy Ev. Accomp.—Joy on the Evidence of Accomplices.
 Joyce Inj.—Joyce on the Doctrine and Principles of Injunction.
 Joyn. Lim.—Joynes on Limitations
 Jud.—Book of Judgments.
 Jud. Repos.—Judicial Repository.
 Jur.—The Jurist.
 Jur. N. S.—The Jurist, New Series.
 Jur. Sc.—The Scotch Jurist.
 Just. Inst.—Institutes of Justinian.
- K.**
- K. B.—King's Bench.
 K. C.—King's Council.
 K. C. R.—English Chancery Reports, tempore King.
 K. & G. R. C.—See Keane & G. R. C.
 K. & J.—See Kay & J.
 K. & O.—See Kn. & O.
 Kames, or Kam. Dec.—Kames' Court of Session Decisions.
 Kames Eluc.—Kames' Elucidations of the Law of Scotland.
 Kames Eq.—Kames on Principles of Equity.
 Kames Rem. Dec.—Kames' Court of Session, Remarkable Decisions.
 Kames Sel. Dec.—Kames' Court of Session, Select Decisions.
 Kames Tr.—Kames' Historical Law Tracts.
 Kan., or Kans.—Kansas; Kansas Reports.
 Kay—Kay's English Chancery Reports.
 Kay Sh. & S.—Kay on Shipmasters and Seamen.
 Kay & J.—Kay & Johnson's English Chancery Reports.
 Keane & G. R. C.—Keane & Grant's Registration Appeal Cases.
 Keat Fam. Set.—Keat's Family Settlements.
 Keb., or Keble—Keble's King's Bench Reports.
 Keb. J.—Keble on Justices of the Peace.
 Keb. Stat.—Keble's Statutes.
 Keen—Keen's Roll's Court Reports.
 Kehoe Cho. Ac.—Kehoe on the Law of Choses in Action.
 Keil., or Keilw.—Keilway's King's Bench and Common Pleas Reports.
 Kel., J., or 1 Kel.—J. Kelyng's King's Bench Reports.
 Kel., W., or 2 Kel.—W. Kelynge's English Chancery Reports.
 Kelh. Dict.—Kelham's Norman French Law Dictionary.
 Kelley Just.—Kelley on Justices of the Peace.
 Kelly Ann.—Kelly on Annuities.
 Kelly Dr.—Kelly's Conveyancing Draftsman.
 Kelly (Ga.)—Kelly's Georgia Reports.
 Kelly Us.—Kelly on Usury.
 Ken. Jur.—Kennedy on Juries.
 Kenn. Gloss.—Kennett's Glossary.
 Kenn. Imp.—Kennett on Impropriations.
 Kent Com.—Kent's Commentaries.
 Keny.—Kenyon's King's Bench Notes.
 Kerr Ac.—Kerr on Actions at Law.
 Kerr Anc. L.—Kerr on Ancient Lights.
 Kerr Bl. Com.—Kerr's Blackstone's Commentaries.
 Kerr Disc.—Kerr on Discovery.
 Kerr Fr.—Kerr on Fraud and Mistake.
 Kerr Inj.—Kerr on Injunctions.
 Kerr (N. B.)—Kerr's New Brunswick Supreme Court Reports.
 Kerr Rec.—Kerr on Receivers.
 Keyes (N. Y.)—Keyes' New York Reports.
 Keyes Rem.—Keyes on Remainders.
 Kilk.—Kilkerran's Court of Session Decisions.
 Kirby (Conn.)—Kirby's Connecticut Superior Court Reports.
 Kirtl. Surr. Pr.—Kirtland's Surrogates' Courts Practice.
 Kit.—Kitchin on Courts.
 Kn., or Knapp—Knapp's Privy Council Reports.
 Kn. & O.—Knapp & Ombler's Election Cases.
 Kn. App. Cas.—Knapp's Appeal Cases.
 Ky.—Kentucky.
 Ky. Dec.—Sneed's Kentucky Decisions.
 Ky. L. J.—Kentucky Law Journal.
 Ky. L. Rep.—Kentucky Law Reporter.
 Kyd Aw.—Kyd on Awards.
 Kyd Bills—Kyd on the Law of Bills of Exchange.
 Kyd Corp.—Kyd on Corporations.
- L.**
- L.—Law; *Liber*.
 L. C.—Lord Chancellor; Lower Canada.
 L. C. B.—Lord Chief Baron.
 L. C. C. C.—Lower Canada Civil Code.
 L. C. C. P.—Lower Canada Civil Procedure.
 L. C. G.—See Loc. Ct. Gaz.
 L. C. J.—Lord Chief Justice; see Low. C. Jur.
 L. C. J. R.—Lower Canada Jurist Reports.
 L. C. L. J.—Lower Canada Law Journal.
 L. C. R.—See Low. C.
 L. H. C.—Lord High Chancellor.
 L. I. L.—Lincoln's Inn Library.
 L. J.—Lords Justices' Court; House of Lords' Journal.
 L. J., or L. J. O. S.—See Law Jour.
 L. J. Adm.—See Law Jour. Adm.
 L. J. Bankr.—See Law Jour. Bankr.
 L. J. C. P.—See Law Jour. C. P.
 L. J. Ch.—See Law Jour. Ch.
 L. J. Ecc.—See Law Jour. Ecc.
 L. J. Exch.—See Law Jour. Exch.
 L. J. M. C.—See Law Jour. M. C.
 L. J. Mat. Cas.—See Law Jour. Mat. Cas.
 L. J. P.—See Law Jour. P.
 L. J. P. C.—See Law Jour. P. C.
 L. J. Q. B.—See Law Jour. Q. B.
 L. J. U. C.—Law Journal, Upper Canada.
 L. L.—Law Latin.
 L. M. & P.—See Lowndes M. & P.
 L. Mag.—Law Magazine.
 L. Mag. & L. R.—Law Magazine and Law Review.
 L. Mag. & Rev.—Law Magazine and Review.
 L. P. B.—Lawrence's Paper Book; see A. P. B.
 L. P. C.—Lord of the Privy Council.
 L. R.—Law Reporter; Law Reports.
 L. R. A. & E.—Law Reports, Admiralty and Ecclesiastical.
 L. R. App. Cas.—Law Reports, Appeal Cases.

- L. & C. C. R.**—Law Reports, Crown Cases Reserved.
L. & C. P.—Law Reports, Common Pleas.
L. R. Ch.—Law Reports, Chancery Appeal Cases.
L. & Eq. Cas.—Law Reports, Equity Cases.
L. R. Ex.—Law Reports, Exchequer.
L. R. H. L.—Law Reports, House of Lords, English and Irish Appeal Cases.
L. R. H. L. Sc.—Law Reports, House of Lords' Scotch and Divorce Appeal Cases.
L. R. Misc. D.—Law Reports, Miscellaneous Division.
L. R. P. C.—Law Reports, Privy Council Appeal Cases.
L. R. P. & D.—Law Reports, Probate and Divorce Cases.
L. R. Q. B.—Law Reports, Queen's Bench.
L. S.—*Locus Sigilli*; Place of the Seal.
L. T.—Law Times; Law Times Reports.
L. T. N. S.—Law Times Reports, New Series.
L. & C. C. C.—See Leigh & C.
L. & G. t. Plunk.—See *Ll. & G. t. P.*
L. & G. t. Sugd.—See *Ll. & G. t. S.*
L. & M.—See Lowndes M. & P.
L. & T.—Landlord and Tenant.
L. & Welsb.—See Lloyd & W.
La.—Louisiana; Louisiana Reports.
La. Ann.—Louisiana Annual Reports.
La Them.—La Themis, Lower Canada.
Lacey Iowa Dig.—Lacey's Iowa Digest.
Lacey Railw. Dig.—Lacey's Digest of Railway Decisions.
Lalor Real Prop.—Lalor on Real Property.
Lalor Supp. Hill & D.—Lalor's Supplement to Hill & Denio's New York Reports.
Lamb., or Lamb. J. P.—Lambard's Justice of the Peace.
Lamb. Dow.—Lambert on Dower.
Lan. Bar.—The Lancaster Bar, Pennsylvania.
Lane.—Lane's Exchequer Reports.
Langd. Sel. Cas. Cont.—Langdell's Select Cases on the Law of Contracts.
Langd. Sel. Cas. Sales.—Langdell's Select Cases on the Law of Sales.
Lans. (N. Y.)—Lansing's New York Reports.
Lat., or Latch.—Latch's King's Bench Reports.
Lath. Dam.—Lathrop on the Law of Damages.
Latr. Just.—Latrobe's Justice.
Law Chron.—Law Chronicle.
Law Dig.—Law Digest.
Law Forms.—Law's Forms of Ecclesiastical Law.
Law Jour.—Law Journal Reports.
Law Jour. Adm.—Law Journal, Admiralty Reports.
Law Jour. Bankr.—Law Journal, Bankruptcy Reports.
Law Jour. C. P.—Law Journal, Common Pleas Reports.
Law Jour. Ch.—Law Journal, Chancery Reports.
Law Jour. Ecc.—Law Journal, Ecclesiastical Reports.
Law Jour. Ex.—Law Journal, Exchequer Reports.
Law Jour. H. L.—Law Journal, House of Lords Reports.
Law Jour. M. C.—Law Journal, Magistrates' Cases.
Law Jour. Mat. Cas.—Law Journal, Divorce and Matrimonial Cases.
Law Jour. N. S.—Law Journal, New Series.
Law Jour. No. Cas.—Law Journal, Notes of Cases.
Law Jour. P.—Law Journal, Probate Reports.
Law Jour. P. C.—Law Journal, Privy Council Reports.
Law Jour. Q. B.—Law Journal, Queen's Bench Reports.
Law Lib.—Law Library.
Law News—St. Louis Law News.
Law Pat. Dig.—Law's Digest of Patent, Copyright and Trademark Cases.
Law Pat. & Copyr. L.—Law's Patent and Copyright Laws.
Law Rec.—Law Recorder, Ireland.
Law Rep.—Law Reporter.
Law Repos.—Carolina Law Repository, North Carolina Supreme Court.
Law Rev. Qu.—Law Review Quarterly.
Law Stud. Mag.—Law Students' Magazine.
Lawes Ch. Par.—Lawes on Charter Parties.
Lawes Pl.—Lawes on Pleadings.
Lawr. Vis. & S.—Lawrence on Visitation and Search.
Laws. Carr.—Lawson on Contracts of Common Carriers.
Laws Ecc. L.—Laws' Ecclesiastical Law.
Lawy. Mag.—Lawyer's Magazine.
Ld. Ken.—Lord Kenyon's King's Bench Notes.
Ld. Raym.—Lord Raymond's King's Bench Reports.
Lea (Tenn.)—Lea's Tennessee Reports.
Leach C. C.—Leach's Crown Cases.
Lead. Cas. Eq.—White & Tudor's Leading Cases in Equity.
Leak Dig.—Leak's Elementary Digest of the Law of Property in Land.
Leake Cont.—Leake on Contracts.
Lee, or Lee Cas.—Lee's Ecclesiastical Court Cases.
Lee Ab.—Lee on Abstracts of Title.
Lee Bankr.—Lee on Bankruptcy.
Lee Br. Sh.—Lee on the Laws of British Shipping.
Lee Cap.—Lee on Captures.
Lee Cas. t. H.—King's Bench Cases tempore Hardwicke.
Lee Dict.—Lee's Dictionary of Practice.
Leem. & C. Q. S.—Leeming & Cross' Quarter Sessions Practice.
Leg. Chr.—Legal Chronicle, Pennsylvania.
Leg. Exam.—Legal Examiner, London.
Leg. Exch.—Legal Exchange, Iowa.
Leg. Gaz.—Legal Gazette, Pennsylvania.
Leg. Gaz. Rep.—Legal Gazette Reports.
Leg. Inq.—Legal Inquirer, London.
Leg. Int.—Legal Intelligencer, Pennsylvania.
Leg. News.—Legal News, Canada.
Leg. Obs.—Legal Observer, London.
Leg. Oler.—Laws of Oleron.
Leg. Rep.—Legal Reporter.
Leg. Rev.—Legal Review, London.
Legg. Ch. For.—Leggo's Chancery Forms.
Legge Outl.—Legge on Outlawry.
Leigh N. P.—Leigh's Nisi Prius.
Leigh (Va.)—Leigh's Virginia Reports.
Leigh & C.—Leigh & Cave's Crown Cases.
Leigh & D. Conv.—Leigh & Dalzell on Conversion.
Leigh & LeM. El.—Leigh & LeMarchant's Law of Elections.

- Leith Bl. Com.—Leith's Blackstone's Commentaries.
 Leith R. P. Stat.—Leith's Real Property Statutes.
 Leon.—Leonard's King's Bench Reports.
 Lest. Land L.—Lester's Land Laws.
 Lev.—Levinz's King's Bench Reports.
 Lev. Ent.—Levinz's Entries.
 Lew. Ap.—Lewin on Apportionment.
 Lew. C. C.—Lewin's Crown Cases.
 Lew. Conv.—Lewis' Principles of Conveyancing.
 Lew. Cr. L.—Lewis' Abridgment of Criminal Law.
 Lew. Eq. Dr.—Lewis' Principles of Equity Drafting.
 Lew. Perp.—Lewis on Perpetuity.
 Lew. Trusts.—Lewin on Trusts.
 Lex Merc.—*Lex Mercatoria*.
 Ley—Ley's King's Bench Reports.
 Lib.—*Liber*; Book.
 Lib. Ass.—*Liber Assisarum*; Book of Assizes.
 Lib. Feud.—*Liber Feudorum*.
 Lib. Int.—*Liber Intrationum*; Old Book of Entries.
 Lib. Pl.—*Liber Placitandi*.
 Lib. Reg.—Register Book.
 Lieb. Civ. Lib.—Lieber on Civil Liberty and Self Government.
 Lieb. Herm.—Lieber on the Science of Hermeneutics.
 Lieb. Pol. Eth.—Lieber's Manual of Political Ethics.
 Lil.—Lilly's Assize Reports.
 Lil. Abr.—Lilly's Abridgment.
 Lil. Conv.—Lilly's Conveyancer.
 Lil. Ent.—Lilly's Entries.
 Lil. Reg.—Lilly's Register.
 Lind. Comp.—Lindley on Companies.
 Lind. Jur.—Lindley's Jurisprudence.
 Lind. Part.—Lindley on Partnership.
 Linn Ind.—Linn's Analytical Index.
 Lit.—Littleton's Common Pleas and Exchequer Reports.
 Lit. Ten.—Littleton's Tenures.
 Litt. (Ky.)—Littell's Kentucky Reports.
 Litt. (Ky.) Sel. Cas.—Littell's Kentucky Selected Cases.
 Litt. & B. Ins. Dig.—Littleton & Blatchley's Insurance Digest.
 Liv. Jud. Op.—Livingston's Judicial Opinions, New York City Mayor's Court.
 Liv. L. Mag.—Livingston's Law Magazine.
 Liv. Pr. & A.—Livermore on Principal and Agent.
 Ll.—*Leges*; Laws.
 Lloyd Ch. St.—Lloyd's Chitty's Statutes.
 Lloyd Comp.—Lloyd on the Law of Compensation.
 Lloyd Pr. Co. Ct.—Lloyd, Law and Practice of the County Court.
 Lloyd & G. t. P.—Lloyd & Goold's Irish Chancery Reports, tempore Plunkett.
 Lloyd & G. t. S.—Lloyd & Goold's Irish Chancery Reports, tempore Sugden.
 Lloyd & W.—Lloyd & Welsby's Mercantile Cases.
 Loc. Ct. Gaz.—Local Courts Gazette, Toronto.
 Lock. Rev. Cas.—Lockwood's Reversed Cases.
 Lofft—Lofft's King's Bench Reports.
 Lom. Dig.—Lomax's Digest of the Law of Real Property.
 Lom. Exr.—Lomax on Executors.
 Lond. Jur.—London Jurist.
 Long Quinto—Year Book, part 10.
 Long Sales—Long on Sales.
 Longf. & T.—Longfield & Townsend's Exchequer Reports.
 Lor. Inst.—Lorimer's Institutes.
 Love. Wills—Lovelass on Wills.
 Low. C.—Lower Canada Reports.
 Low. C. Jur.—Lower Canada Jurist.
 Low. (U. S.)—Lowell's U. S. District Court Reports.
 Lownd. Av.—Lowndes on Average.
 Lownd. Col.—Lowndes on Collisions.
 Lownd. Copyr.—Lowndes on Copyright.
 Lownd. Leg.—Lowndes on Legacies.
 Lownd. M. & P.—Lowndes, Maxwell & Pollock's Bail Court Reports.
 Lownd. Mar. Ins.—Lowndes on the Laws of Marine Insurance.
 Lownd. & M.—Lowndes & Maxwell's Bail Court Reports.
 Lubé Eq. Pl.—Lubé's Principles of Equity Pleading.
 Luc.—Lucas' Cases in Law and Equity.
 Lud. El. Cas.—Luder's Election Cases.
 Lud. & Jenk.—Ludlow & Jenkyns on Trade-marks.
 Ludd.—Ludden's Reports.
 Lum. An.—Lumley on Annuities.
 Lum. Byl.—Lumley on By-Laws.
 Lum. Cas.—Lumley's Poor Law Cases.
 Lund Pat.—Lund on Patents.
 Lush. Adm.—Lushington's Admiralty Reports.
 Lush Com. L. Pr.—Lush's Common Law Practice.
 Lush. P. L.—Lushington on Prize Law.
 Lutw.—Lutwyche's Common Pleas Reports, Lutwyche's Cases tempore Queen Anne.
 Lutw. Ent.—Lutwyche's Entries.
 Lutw. R. C.—Lutwyche's Registration Cases.
 Lynd. Prov.—Lyndwood's *Provinciales*.

M.

- M.—Queen Mary; 1 M. denotes the first year of the reign of Queen Mary.
 M. C.—See Mag. Cas.
 M. C. C.—See Moo. C. C.
 M. D. & D.—See Mont. D. & DeG.
 M. G. & S.—See Man. G. & S.
 M. R.—Master of the Rolls.
 M. St.—See More St.
 M. T.—Michaelmas Term.
 M. & Ayr.—See Mont. & A.
 M. & B.—See Mont. & B.
 M. & C.—See Myl. & C.
 M. & G.—See Man. & G.
 M. & Gord.—See Macn. & G.
 M. & M.—See Moo. & M.
 M. & MacA.—See Mont. & MacA.
 M. & P.—See Moo & P.
 M. & R.—See Man. & R.
 M. & R. M. C.—See Man. & R. Mag. Cas.
 M. & Rob.—See Moo. & R.
 M. & S.—See Mau. & Sel.
 M. & Sc.—See Moo. & Sc.
 M. & W.—See Mees. & W.
 M. & Y. (Tenn.)—See Mart. & Y. (Tenn.)
 Macalp. Len. & Bor.—Macalpin on the Law of Money Lenders and Borrowers.

- MacArth.**—MacArthur's Supreme Court of the District of Columbia Reports.
Macask. Exr.—Macaskie on the Law of Executors.
Macass. N. Z.—Macassay's New Zealand Reports.
Maccl.—Cases in Law and Equity tempore Macclesfield.
Macdoug.—Macdougall's Jamaica Reports.
Macf.—Macfarlane's Scotch Jury Court Reports.
Mack. Civ. L.—Mackeldy on Civil Law.
Mack. Cr. L.—Mackenzie on Criminal Law of Scotland.
Mack. Inst.—Mackenzie's Institutes of the Law of Scotland.
Mack. Obs.—Mackenzie's Observations on Acts of Parliament.
Mack. Rom. L.—Mackenzie on Roman Law.
Macl. Dec.—Maclaurin's Decisions.
Macl. Ship.—Maclachlan on Shipping.
Macl. & R.—Maclcan & Robinson's House of Lords Reports.
Macn.—Macnaghten's Indian Court Reports.
Macn. Co. Mar.—Macnaghten on Courts Martial.
Macn. Ev.—Macnally's Evidence on Pleas of the Crown.
Macn. F.—F. Macnaghten's Indian Court Reports.
Macn. Null.—Macnamara on Nullities and Irregularities.
Macn. Sel. Cas.—Macnaghten's Select Cases in High Court of Chancery.
Macn. & G.—Macnaghten & Gordon's English Chancery Reports.
Macomb Co. Mar.—Macomb on Courts Martial.
Macph.—Macpherson's Court of Session Cases.
Macph. Inf.—Macpherson on Infancy.
Macph. Jud. Com.—Macpherson on Practice of the Judicial Committee of the Privy Council.
Macq. Div.—Macqueen on Divorce and Matrimonial Causes.
Macq. H. L. Cas.—Macqueen's House of Lords Cases.
Macq. Husb. & W.—Macqueen on Rights and Liabilities of Husband and Wife.
Macq. M. & D.—Macqueen on Marriage and Divorce.
Macr. Pat. Cas.—Macroy's Patent Cases.
Mad., or Madd.—Maddock's English Chancery Reports.
Mad. Ch.—Maddock's Chancery Practice.
Mad. Exch.—Madox's History of the Exchequer.
Mad. Form.—Madox's *Formulæ Anglicanum*.
Mad. H. Ct. R.—Madras High Court Reports.
Mad. Jur.—Madras Jurist.
Mad. S. D. R.—Madras Sudder Dewarry Reports.
Mad. Sel. D.—Madras Select Decrees.
Mad. & Geld.—Maddock & Geldart's Reports.
Mag.—The Magistrate.
Mag. Cas.—Magistrates' Cases.
Mag. Char.—*Magna Charta*.
Mag. Ins.—Magens on Insurance.
Magr. Rep.—Magruder's Reports.
Maine Anc. L.—Maine on Ancient Law.
Maine Hist. Inst.—Maine's Early History of Institutions.
Maine Vil. Com.—Maine on Village Communities.
Mal.—Malyne's *Lex Mercatoria*.
Mall. Ent.—Mallory's Modern Entries.
Malt. Co. Mar.—Maltby on Courts Martial.
Malth. Pop.—Malthus on Population.
Man. Com.—Manning's Commentaries.
Man. El. Cas.—Manning's English Election Cases.
Man. Exch. Pr.—Manning on the Practice of the Court of Exchequer.
Man., G. & S.—Manning, Granger & Scott's Common Pleas Reports.
Man. Int. Law—Manning's Commentaries on the Law of Nations.
Man. S. ad L.—Manning's *Serviens ad Legem*.
Man. & G.—Manning & Granger's Common Pleas Reports.
Man. & R.—Manning & Ryland's King's Bench Reports.
Man. & R. Mag. Cas.—Manning & Ryland's Magistrates' Cases.
Manb. Fines—Manby on Fines.
Mans. Dem.—Mansel on Demurrers.
Mans. Lim.—Mansel on Limitations.
Manw.—Manwood's Forest Laws.
Mar.—March's King's Bench Reports; Marine; Maritime.
Mar. Br.—March's Brooke's New Cases.
Marg.—Margin.
Mark. El. L.—Markby's Elements of Law.
Marr. Adm.—Marriott's Admiralty Reports.
Marsd. Coll.—Marsden on the Law of Collisions at Sea.
Marsh.—Marshall's Common Pleas Reports.
Marsh. Dec.—Brockenbrough's Reports, Marshall's U. S. Circuit Court Decisions.
Marsh. Ins.—Marshall on the Law of Insurance.
Marsh. J. J. (Ky.)—J. J. Marshall's Kentucky Reports.
Marsh. (Ky.)—A. K. Marshall's Kentucky Reports.
Mart. (La.)—Martin's Louisiana Reports.
Mart. (La.) N. S.—Martin's Louisiana Reports, New Series.
Mart. Law Nat.—Martin's Law of Nations.
Mart. (N. C.)—Martin's North Carolina Reports.
Mart. & Y. (Tenn.)—Martin & Yerger's Tennessee Reports.
Marv. Av.—Marvin on General Average.
Marv. Leg. Bibl.—Marvin's Legal Bibliography.
Marv. Wr. & S.—Marvin on Wreck and Salvage.
Mas. (U. S.)—Mason's U. S. Circuit Court Reports.
Mass.—Massachusetts Reports.
Mass. El. Cas.—Massachusetts Election Cases.
Mass. L. Rep.—Massachusetts Law Reporter.
Math. Ev.—Mathews on Presumptive Evidence.
Matth. Dig.—Matthews' Digest.
Matth. Exr.—Matthews on Executors.
Matth. Part.—Matthews on Partnership.
Mau. & Sel.—Maule & Selwyn's King's Bench Reports.
Maud. & P. Mer. Sh.—Maude & Pollock on Merchant Shipping.
Maugh. Lit. Pr.—Maughan on Literary Property.
Max.—Maxims.
Maxw. Int. Stat.—Maxwell on the Interpretations of Statutes.
Maxw. L. Dict.—Maxwell's Dictionary of the Law of Bills of Exchange.
Maxw. Mar. L.—Maxwell's Spirit of the Marine Laws.

- May Const. Hist.—May's Constitutional History of England.
 May Cr.—May on Crimes.
 May Fraud. Conv.—May on Fraudulent Conveyancing.
 May Ins.—May on Insurance.
 May Parl. L.—May on Parliamentary Law.
 Mayne Dam.—Mayne on Damages.
 Mayne Eq. Def.—Mayne on Equitable Defenses.
 Mayo Just.—Mayo's Justice.
 Mayo & Moul. P. L.—Mayo & Moulton's Pension Laws.
 McAd. Land. & T.—McAdam on Landlord and Tenant.
 McAll. (U. S.)—McAllister's U. S. District Court Reports.
 M'Arth. Co. Mar.—M'Arthur on Courts Martial.
 McCahon (U. S.)—McCahon's U. S. District Court Reports.
 McCall Cl. Ass.—McCall's Clerks' Assistant.
 McCall Const. Gu.—McCall's Constables' Guide.
 McCall (N. Y.) Just.—McCall's New York Justice.
 McCall Prec.—McCall's Precedents.
 McCart. (N. J.)—McCarter's New Jersey Chancery Reports.
 McClel.—McClelland's Exchequer Reports.
 McClel. Civ. Mal.—McClelland's Civil Malpractice.
 McClel. Surr. Ct.—McClellan's Surrogates' Courts Practice.
 McClel. & Y.—McClelland & Younge's Exchequer Reports.
 McCord (S. C.) Ch.—McCord's South Carolina Chancery Reports.
 McCord (S. C.) L.—McCord's South Carolina Law Reports.
 McCra. Cont. El.—McCrary on Contested Elections.
 McCull. Dict.—McCullough's Commercial Dictionary.
 McDon. Just.—McDonald's Justice.
 McGloin (La.)—McGloin's Louisiana Appeal Courts Reports.
 McKinn. Just.—McKinney's Justice.
 McKinn. Phil. Ev.—McKinnon's Philosophy of Evidence.
 McLean (U. S.)—McLean's U. S. Circuit Court Reports.
 McMast. Dig.—McMaster's Digest of the Law of Railways.
 McMast. Ry. L.—McMaster's Railroad Laws.
 McMull. (S. C.) Eq.—McMullan's South Carolina Equity Reports.
 McMull. (S. C.) L.—McMullan's South Carolina Law Reports.
 McNal. Ev.—McNally on Evidence.
 Md.—Maryland; Maryland Reports.
 Md. Ch.—Maryland Chancery Decisions.
 Md. L. Rec.—Maryland Law Record.
 Md. L. Rep.—Maryland Law Reporter.
 Me.—Maine; Maine Reports.
 Med. Jur.—Medical Jurisprudence.
 Mees. & W.—Meeson & Welsby's Exchequer Reports.
 Meigs (Tenn.)—Meigs' Tennessee Reports.
 Mer., or Meriv.—Merivale's English Chancery Reports.
 Merch. Dict.—Merchant's Dictionary.
 Merl. Quest.—Merlin, *Questions de Droit*.
 Merl. Report.—Merlin's *Repertoire*.
 Merrif. Attor.—Merrifield's Law of Attorneys.
 Merrif. Costs—Merrifield's Law of Costs.
 Metc. Cont.—Metcalf's Principles of the Law of Contracts.
 Metc. (Ky.)—Metcalf's Kentucky Reports.
 Metc. (Mass.)—Metcalf's Massachusetts Reports.
 Mich.—Michigan; Michigan Reports; Michaelmas.
 Mich. N. P.—Michigan Nisi Prius Cases.
 Midd. Sitt.—Middlesex Sittings at Nisi Prius.
 Miles (Pa.)—Miles' Philadelphia District Court Reports.
 Mill. Civ. L.—Miller's Civil Law.
 Mill. Dec.—See Woolw.
 Mill. Eq. Mort.—Miller on Equitable Mortgages.
 Mill. Ins.—Miller's Elements of the Law of Insurance.
 Mill. L. Tax—Miller's Land Tax.
 Mill. Part.—Miller on Partition.
 Mill Pol. Ec.—Mill's Principles of Political Economy.
 Mill (S. C.)—Mill's South Carolina Reports.
 Mill. & C. Sale—Millar & Collier on Bills of Sale.
 Mills Em. Dom.—Mills on the Law of Eminent Domain.
 Milw.—Milward's Irish Prerogative Court Reports.
 Min. Dig.—Minot's Digest.
 Minn.—Minnesota; Minnesota Reports.
 Minor (Ala.)—Minor's Alabama Reports.
 Minor Inst.—Minor's Institutes of Common and Statute Law.
 Mirch. Dr. & St.—Mirchall's Doctor and Student.
 Mireh. Advow.—Mirehouse on Advowsons.
 Mirr. J.—Mirror of Justices.
 Miss.—Mississippi; Mississippi Reports.
 Mitf. Pl.—Mitford on Chancery Pleading.
 Mitf. & T. Pl. & Pr.—Mitford & Tyler's Pleadings and Practice in Equity.
 Mo.—Missouri; Missouri Reports.
 Mo. App.—St. Louis Court of Appeals Reports.
 Mo. L. Mag.—Monthly Law Magazine.
 Mod.—Modern Reports, English Courts.
 Mod. Cas.—Modern Reports, vols. 2, 6, 8, 9.
 Mod. Cas. L. & Eq.—Modern Reports, vols. 8, 9.
 Mod. Ent.—Modern Entries.
 Moll.—Molloy's Irish Chancery Reports.
 Moll. de J. M.—Molloy *de Jure Maritimo*.
 Mon.—Montana; Montana Reports.
 Mon. T.—Montana Territory; Montana Territorial Reports.
 Monr., B. (Ky.)—B. Monroe's Kentucky Reports.
 Monr., T. B. (Ky.)—T. B. Monroe's Kentucky Reports.
 Mont.—Montagu's Bankruptcy Reports.
 Mont. Bankr. L.—Montagu on the Bankrupt Laws.
 Mont. Comp.—Montagu on the Law of Composition.
 Mont. D. & DeG.—Montagu, Deacon & DeGex's Bankruptcy Reports.
 Mont. Eq. Dig.—Montagu's Digest of Pleadings in Equity.
 Mont. Eq. Pl.—Montagu's Equity Pleadings.
 Mont. Set-off—Montagu on Set-off.
 Mont. & A.—Montagu & Ayrton's Bankruptcy Reports.
 Mont. & B.—Montagu & Bligh's Bankruptcy Reports.

Mont. & C.—Montagu & Chitty's Bankruptcy Reports.
Mont. & MacA.—Montagu & MacArthur's Bankruptcy Reports.
Montesq.—Montesquieu's Spirit of the Laws.
Moo.—Sir Francis Moore's Reports.
Moo. Abs. Tit.—Moore on Abstracts of Title.
Moo. Cas.—Moody's Nisi Prius and Crown Cases.
Moo. C. C.—Moody's Crown Cases.
Moo. C. P.—Moore's Common Pleas Reports.
Moo. Civ. Just.—Moore's Civil Justice.
Moo. Cr. Just.—Moore's Criminal Justice.
Moo. I. A.—Moore's Indian Appeals.
Moo. Ind. Cr. Pr.—Moore's Criminal Practice.
Moo. J. B.—J. B. Moore's Common Pleas Reports.
Moo. P. C. C.—Moore's Privy Council Cases.
Moo. P. C. C. N. S.—Moore's Privy Council Cases, New Series.
Moo. Tr.—Moore's Trials.
Moo. & M.—Moody & Malkin's Nisi Prius Cases.
Moo. & P.—Moore & Payne's Common Pleas Reports.
Moo. & R.—Moody & Robinson's Nisi Prius Cases.
Moo. & Sc.—Moore & Scott's Common Pleas Reports.
Mor.—Morison's Dictionary of Court of Session Decisions.
Moreh. Pr.—Morehead's Practice.
More St.—More's Notes on Stair's Decisions.
Morr. Dig. Min. Dec.—Morrison's Digest of Mining Decisions.
Morr. (Iowa)—Morris' Iowa Reports.
Morr. Jam.—Morris' Jamaica Reports.
Morr. Repl.—Morris on Replevin.
Morr. St. Cas.—Morris' Mississippi State Cases.
Morr. Trans. App.—Morrison's Transcript Reports, U. S. Supreme Court.
Morse Arb.—Morse on Arbitration and Awards.
Morse Bk.—Morse on Banks and Banking.
Morse Fam. Tr.—Morse's Famous Trials.
Mort. Vend.—Morton's Law of Vendors and Purchasers of Chattels Personal.
Mos.—Moseley's English Chancery Reports.
Mos. Mand.—Moses on Mandamus.
Mozley & W.—Mozley & Whiteley's Law Dictionary.
Mss.—Manuscripts.
Mun. Corp.—Municipal Corporations.
Munf. (Va.)—Munford's Virginia Reports.
Mung. App. Pay.—Munger on the Application of Payments.
Murph. (N. C.)—Murphey's North Carolina Reports.
Murph. & H.—Murphy & Hurlstone's Exchange Reports.
Murr.—Murray's Scotch Jury Court Reports.
Murr. Over. Cas.—Murray's Overruled Cases.
Murr. Pr.—Murray's Proceedings in United States Courts.
Murr. Us.—Murray on Usury.
MyL & C.—Myline & Craig's English Chancery Reports.
MyL & K.—Myline & Keen's English Chancery Reports.

N.

N.—See Nov.

N. B.—New Brunswick; New Brunswick Reports; *Nota bene*; *Nulla Bona*

N. Benl.—New Benloe; Anonymous Reports at the end of Benloe's Reports.
N. C.—North Carolina; North Carolina Reports; Notes of Ecclesiastical and Maritime Cases.
N. C. Repos.—North Carolina Repository.
N. C. Term.—See Tayl. (N. C.)
N. Chip. (Vt.)—N. Chipman's Vermont Reports.
N. F.—Newfoundland; Newfoundland Reports.
N. H.—New Hampshire; New Hampshire Reports.
N. H. & C.—See Nich. H. & C.
N. J.—New Jersey; New Jersey Reports.
N. J. Eq.—New Jersey Equity Reports.
N. J. L.—New Jersey Law Reports.
N. J. L. J.—New Jersey Law Journal.
N. L.—Nelson's Lutwyche's Common Pleas Reports.
N. P.—Nisi Prius; *Nova Placita*.
N. P. C.—Nisi Prius Cases.
N. R.—See New Rep.
N. S.—New Series; see Nov. Sc.
N. W. Rep.—North Western Reporter.
N. W. Rep. Vic.—North Western Reports, Victoria.
N. Y.—New York; New York Reports.
N. Y. Leg. Obs.—New York Legal Observer.
N. Y. Super. Ct.—New York Superior Court Reports.
N. Y. Supr. Ct.—New York Supreme Court Reports.
N. Y. Week. Dig.—New York Weekly Digest.
N. & M.—See Nev. & M.
N. & McC.—See Nott. & M.
N. & P.—See Nev. & P.
Nar. Convic.—Nares on Convictions.
Nash Pl. & Pr.—Nash on Pleading and Practice.
Nasm. Inst.—Nasmith's Institutes of English Law.
Nat. Bk. Cas.—National Bank Cases.
Neal F. & F.—Neal's Feasts and Fasts.
Neb.—Nebraska; Nebraska Reports.
Nels.—Nelson's English Chancery Reports.
Nels. Abr.—Nelson's Abridgement.
Nels. Lex Man.—Nelson's *Lex Maneriorum*.
Nev.—Nevada; Nevada Reports.
Nev. & M.—Neville & Manning's King's Bench Reports.
Nev. & Macn. R. & C. Cas.—Neville & Macnamara's Railway and Canal Cases.
Nev. & P.—Neville & Perry's King's Bench Reports.
New Mag. Cas.—New Magistrates' Cases.
New Pr. Cas.—New Practice Cases.
New Rep.—New Reports; Bosanquet & Puller's Reports.
New Sess. Cas.—New Sessions Cases; Carrow, Hamerton & Allen's Reports.
New York City H. Rec.—New York City Hall Recorder.
New Zea. App.—New Zealand Appeal Reports.
New Zea. Sup. Ct.—New Zealand Supreme Court Reports.
Newb. Adm.—Newberry's U. S. District Courts Admiralty Reports.
Newl. Ch.—Newland on Chancery Practice.
Newl. Cont.—Newland on Contracts.
Newm. Conv.—Newman on Conveyancing.
Newm. Pr.—Newman's Kentucky Practice.
Nich. Adult. Bas.—Nicholas on Adulterine Bastardy.

Nich. H. & C.—Nicholl, Hare & Carrow's Railway Cases.
 Nix. For.—Nixon's New Jersey Forms.
 No. N.—*Novae Narrationes*.
 Nol. Mag. Cas.—Nolan's English Magistrates' Cases.
 Nol. P. L.—Nolan on Poor Laws.
 Nol. Sett.—Nolan's Settlement Cases.
 Norm. Copyr.—Norman on Copyright, &c.
 Norm. Pat.—Norman on Patents.
 North.—Northington's English Chancery Reports.
 Nott Mech. L.—Nott on Mechanics' Lien Law.
 Nott & H. (U. S.)—Nott & Huntington's U. S. Court of Claims Reports.
 Nott & Hop. (U. S.)—Nott & Hopkins' Court of Claims Reports.
 Nott & M. (S. C.)—Nott & McCord's South Carolina Reports.
 Nov.—*Novellæ*; the Novels, or New Constitutions.
 Nov. Sc.—Nova Scotia.
 Nov. Sc. Dec.—Nova Scotia Decisions.
 Noy—Noy's King's Bench Reports.
 Noy Max.—Noy's Maxims.

O.

O.—Ohio; Ohio Reports; *Ordonnance*.
 O. Benl.—Old Benloe's Reports; Benloe's Reports.
 O. Bridg.—Orlando Bridgman's Common Pleas Reports.
 O. C.—Old Louisiana Civil Code.
 O. N. B.—Old *Natura Brevium*.
 O'Brien M. L.—O'Brien's Military Law.
 Odg. Dig. Lib. & S. Odger's Digest of the Law of Libel and Slander.
 Off. Brev.—*Officina Brevium*.
 Ohio—Ohio Reports.
 Ohio L. J.—Ohio Law Journal.
 Ohio St.—Ohio State Reports.
 Oke Mag. Form.—Oke's Magisterial Formulist.
 Oke Mag. Syn.—Oke's Magisterial Synopsis.
 Olc. Adm.—Olcott's U. S. District Court Admiralty Reports.
 Old.—Oldright's Nova Scotia Reports.
 Oldn.—Oldnall's Welsh Practice.
 Oliph. Hors.—Oliphant on Law of Horses.
 Oliv. Conv.—Oliver's Conveyancing.
 Oliv. Prec.—Oliver's Precedents.
 Oliv. B. & L.—Oliver, Beavan & Lefroy's Railway and Canal Cases.
 O'Mal. & H.—O'Malley & Hardcastle's Election Cases.
 O'Neill Neg. L.—O'Neill's Negro Law.
 Onsl. N. P.—Onslow's Nisi Prius.
 Op. Att. Gen.—Opinions of Attorneys-General of the United States.
 Ord. Ch.—Orders in Chancery.
 Ord. Cla.—Orders of Lord Clarendon.
 Ord. Lun.—Ordonaux's Commentaries on the Lunacy Laws.
 Ord. Med. Jur.—Ordonaux's Medical Jurisprudence.
 Ord Us.—Ord on the Law of Usury.
 Oreg.—Oregon; Oregon Reports.
 Orf. M. L.—*Orfila Médecine Légale*.
 Orto. Rom. L.—Ortolan's History of Roman Law.

Otto (U. S.)—Otto's U. S. Supreme Court Reports.
 Ought.—Oughton's *Ordo Judiciorum*.
 Overt. (Tenn.)—Overton's Tennessee Reports.
 Owen—Owen's King's Bench and Common Pleas Reports.
 Owen Bankr.—Owen on Bankruptcy.

P

P.—Page, or part; *see* Pas. T.
 P. C.—Probate Court; Privy Council; Pleas of the Crown; Penal Code.
 P. C. C.—Privy Council Cases.
 P. L.—Pamphlet Laws; Poor Laws; Public Laws.
 P. N. P.—*See* Peake N. P.
 P. R.—Parliamentary Reports.
 P. R. C. P.—Practical Register in Common Pleas.
 P. R. Ch.—Practical Register in Chancery.
 P. Wms.—Peere Williams' English Chancery Reports.
 P. & D.—*See* Perry & D.
 P. & H.—*See* Patt & H.
 P. & K.—*See* Perry & K.
 P. & M.—Phillip & Mary; 1 P. & M. denotes the first year of the reign of Phillip and Mary.
 Pa.—Pennsylvania; Pennsylvania Reports.
 Pa. L. J.—Pennsylvania Law Journal Reports.
 Pa. Leg. Gaz.—Pennsylvania Legal Gazette Reports.
 Pa. St.—Pennsylvania State Reports.
 Pac. C. L. J.—Pacific Coast Law Journal.
 Page Div.—Page on Divorce.
 Paige (N. Y.)—Paige's New York Chancery Reports.
 Paine (U. S.)—Paine's U. S. Circuit Court Reports.
 Paley Ag.—Paley on Agency.
 Paley Sum. Convic.—Paley on Summary Convictions.
 Palm.—Palmer's English King's Bench Reports.
 Palm. Comp. Prec.—Palmer on Company Precedents.
 Palm. Pr.—Palmer's House of Lords Practice.
 Pamph.—Pamphlets.
 Pand.—Pandects.
 Par. & Fonb. Med. Jur.—Paris & Fonblanque on Medical Jurisprudence.
 Park.—Parker's Exchequer Reports.
 Park Dow.—Park on Dower.
 Park Ins.—Park on Insurance.
 Park. (N. Y.) Cr.—Parker's New York Criminal Reports.
 Park. Pr. Ch.—Parker's Practice in Chancery.
 Park. Sh. & Ins.—Parker on Shipping and Insurance.
 Pars. Bills & N.—Parsons on Bills and Notes.
 Pars. Cont.—Parsons on Contracts.
 Pars. Eq. Cas.—Parsons' Pennsylvania Select Cases in Equity.
 Pars. Law Bus.—Parsons' Law of Business.
 Pars. Mar. Ins.—Parsons on Marine Insurance.
 Pars. Mar. L.—Parsons on Maritime Law.
 Pars. Merc. L.—Parsons on Mercantile Law.
 Pars. Partn.—Parsons on Partnership.
 Pars. Sh. & Adm.—Parsons on Shipping and Admiralty.
 Pars. Wills—Parsons on Wills.
 Partid.—Partidas.

- Pas. T.—Easter Term.
 Pasch. Ann. Const.—Paschall's Annotated Constitution.
 Pat. Com.—Paterson's Commentaries on the Laws of England.
 Pat. H. L. Sc.—Paton's House of Lords Reports; Appeals from Scotland.
 Pat. Lib. Press.—Paterson on Liberty of the Press.
 Pat. Off. Dec.—Patent Office Decisions.
 Pat. Off. Gaz.—Patent Office Gazette.
 Pat. Sc. App.—Paterson's Scotch Appeals.
 Pat. St. Exch.—Paterson on Usages of the Stock Exchange.
 Patch Mort.—Patch on Mortgages.
 Patt. & H. (Va.)—Patton & Heath's Virginia Special Court of Appeals Reports.
 Paul Par. Off.—Paul's Parish Officer.
 Pay. Mun. R.—Payne's Municipal Rights.
 Peach. Mar. Set.—Peachey on Marriage Settlements.
 Peake Add. Cas.—Peake's Additional Cases.
 Peake Ev.—Peake on Evidence.
 Peake N. P.—Peake's Nisi Prius Cases.
 Pearce Cr. C.—Pearce's Crown Cases.
 Peck (Tenn.)—Peck's Tennessee Reports.
 Peckw. El. Cas.—Peckwell's Election Cases.
 Pemb. Judg. & O.—Pemberton on Judgments and Orders.
 Pen., or Penn. (N. J.)—Pennington's New Jersey Reports.
 Penr. Anal.—Penruddock's Analysis of the Criminal Law.
 Penr. & W. (Pa.)—Penrose & Watts' Pennsylvania Reports.
 Perk. Conv.—Perkins on Conveyances.
 Perk. Prof. Bk.—Perkins' Profitable Book.
 Perp. Pat.—Perpigna on Patents.
 Perry Trusts—Perry on Trusts and Trustees.
 Perry & D.—Perry & Davison's Queen's Bench Reports.
 Perry & K.—Perry & Knapp's Election Cases.
 Pet. Adm.—Peters' U. S. District Court Admiralty Reports.
 Pet. C. C. (U. S.)—Peters' U. S. Circuit Court Reports.
 Pet. (U. S.)—Peters' U. S. Supreme Court Reports.
 Petersd. Abr.—Petersdorf's Abridgment.
 Petersd. Bail.—Petersdorf on Bail.
 Petting. Jur.—Pettingal on Juries.
 Phear. Rts. W.—Phear on Rights of Water.
 Phil.—Phillips' English Chancery Reports.
 Phil. El. Cas.—Phillips' Election Cases.
 Phil. Ev.—Phillips on Evidence.
 Phil. Fam. Cas.—Phillips' Famous Cases of Circumstantial Evidence.
 Phil. Ins.—Phillips on Insurance.
 Phil. Jur. Sup. Ct.—Phillips' Jurisdiction of the Supreme Court.
 Phil. Lun.—Phillips on Lunatics, Idiots, &c.
 Phil. Mech. L.—Phillips on Mechanics' Lien.
 Phil. (N. C.) Eq.—Phillips' North Carolina Equity Reports.
 Phil. (N. C.) L.—Phillips' North Carolina Law Reports.
 Phil. (Pa.)—Philadelphia Reports.
 Phil. St. Tr.—Phillips' State Trials.
 Phillim.—Phillimore's Ecclesiastical Reports.
 Phillim. Dom.—Phillimore on Domicil.
 Phillim. Ecc. L.—Phillimore on Ecclesiastical Law.
 Phillim. Ev.—Phillimore on Evidence.
 Phillim. Int. L.—Phillimore on International Law.
 Phillim. Rom. L.—Phillimore on Roman Law.
 Pick. (Mass.)—Pickering's Massachusetts Reports.
 Pierce Railr. L.—Pierce on Railroad Law.
 Pig.—Pigott on Recoveries.
 Pig. & R.—Pigott & Rodwell's Election Cases.
 Pike (Ark.)—Pike's Arkansas Reports.
 Pinn. (Wis.)—Pinney's Wisconsin Reports.
 Pist. Mau.—Piston's Mauritius Reports.
 Pitt. Cr. Cas.—Pitcairn's Scotch Criminal Cases.
 Pitm.—Pitman on Suretyship.
 Pittsb. L. J.—Pittsburgh Legal Journal.
 Pittsb. Rep.—Pittsburgh Legal Journal Reports.
 Pitt-L. C. C. Pr.—Pitt-Lewis on County Court Practice.
 Pl., or Pla.—Placita.
 Platt Cov.—Platt on Covenants.
 Platt Leas.—Platt on Leases.
 Plff., or Plpff.—Plaintiff.
 Plowd.—Plowden's Commentaries, or Reports.
 Plowd. U.—Plowden on Usury.
 Poll.—Pollexfen's English Reports.
 Poll. C. C. Pr.—Pollock's County Court Practice.
 Poll. Cont.—Pollock on Contract.
 Poll. Dig. Part.—Pollock's Digest on the Law of Partnership.
 Poll. Ev.—Pollock's New Law of Evidence.
 Pols. Law Nat.—Polson's Law of Nations.
 Pom. Const. L.—Pomeroy on Constitutional Law.
 Pom. Eq. Jur.—Pomeroy on Equity Jurisprudence.
 Pom. Mun. L.—Pomeroy on Municipal Law.
 Pom. Rem.—Pomeroy on Remedies.
 Pom. Spec. Perf.—Pomeroy on the Specific Performance of Contracts.
 Pope B. of S.—Pope on Bills of Sale.
 Pope Lun.—Pope on the Law and Practice of Lunacy.
 Poph.—Popham's English Reports.
 Port. (Ala.)—Porter's Alabama Reports.
 Poste El. Rom. L.—Poste on the Elements of Roman Law.
 Postleth. Dict.—Postlethwaite's Dictionary of Trade.
 Poth. Obl.—Pothier on Obligations.
 Poth. Pand.—Pothier's Pandects.
 Poth. Part.—Pothier on Partnership.
 Poth. Sale—Pothier on Contract of Sale.
 Pott. Corp.—Potter on the Law of Corporations.
 Pott L. Dict.—Pott's Law Dictionary.
 Pow. Anal. Am. L.—Powell's Analysis of American Law.
 Pow. App. Pro.—Powell on Appellate Proceedings.
 Pow. Carr.—Powell's Law of Inland Carriers.
 Pow. Cont.—Powell on Contracts.
 Pow. Conv.—Powell on Conveyances.
 Pow. Dev.—Powell on Devises.
 Pow. Ev.—Powell on Evidence.
 Pow. Mort.—Powell on Mortgages.
 Pow. Powers—Powell on Powers.
 Pow. Prec.—Powell's Precedents in Conveyancing.
 Pow. R. & D.—Power, Rodwell & Dew's Election Cases.
 Poynt. M. & D.—Poynter on Marriage and Divorce.

Pr.—Practice; Precedents; *Principio*; in the beginning.
 Pr. Ch.—Precedents in Chancery.
 Pr. Co.—Prerogative Court.
 Pr. Dec.—Sneed's Kentucky Decisions.
 Pr. Falc.—President Falconer's Court of Session Reports.
 Pr. St.—Private Statute.
 Prat. Husb. & W.—Prater on the Law of Husband and Wife.
 Prent. Com. L. Ac.—Prentice on Common Law Actions.
 Pres. Abs. Tit.—Preston on Abstracts of Title.
 Pres. Conv.—Preston on Conveyancing.
 Pres. Est.—Preston on Estates.
 Pres. Leg.—Preston on Legacies.
 Pres. Merg.—Preston on Merger.
 Pres. Shep. T.—Preston's Sheppard's Touchstone.
 Price—Price's Exchequer Reports.
 Price Gen. Pr.—Price's General Practice.
 Prid. Prec. Conv.—Prideaux on Precedents in Conveyancing.
 Prid. & C.—Prideaux & Cole's Reports.
 Prin. Dec.—Hughes' Kentucky Printed Decisions.
 Prior For. Conv.—Prior's Short Forms of Conveyancing.
 Pritch. Adm. Dig.—Pritchard's Admiralty Digest.
 Pritch. Dig.—Pritchard's Digest of the Law and Practice.
 Pritch. Quar. Sess.—Pritchard's Quarter Sessions.
 Prob. & Mat. Cas.—Probate and Matrimonial Cases.
 Proc. Pr.—Proctor's Practice.
 Prof. Jury Tr.—Proffatt on Jury Trial.
 Prof. Not.—Proffatt on Notaries.
 Puf.—Puffendorf's Law of Notions.
 Pugs. N. B.—Pugsley's New Brunswick Reports.
 Pugs. & B. N. B.—Pugsley & Burbidge's New Brunswick Reports.
 Pull. Attorn.—Pulling on Law of Attorneys.
 Pult. de Pace—Pulton *de Pace Regis*.
 Purd. Dig.—Purdon's Pennsylvania Digest.
 Puterb. Ch. Pl. & Pr.—Puterbaugh's Chancery Pleading and Practice.
 Puterb. C. L. Pl. & Pr.—Puterbaugh's Common Law Pleading and Practice.
 Pyke—Pyke's Lower Canada King's Bench Reports.

Q.

Q.—Question; *Quorum*.
 Q. B.—Queen's Bench; Queen's Bench Reports.
 Q. B. D.—Law Reports, Queen's Bench Division.
 Q. C.—Queen's Counsel.
 Q. S.—Quarter Sessions.
 Q. t.—*Qui tam*.
 Q. v.—*Quod vide*; which see.
 Qu.—*Quere*.
 Qu. cl. fr.—*Quare clausum fregit*.
 Quart. L. J.—Quarterly Law Journal.
 Queb. L. Rep.—Quebec Law Reports.
 Quincy (Mass.)—Quincy's Massachusetts Reports.
 Quinti Quinto—Year Book, 5 Hen. V.
 Quo War.—*Quo Warranto*.

R.

R.—King Richard; 1 R. I., denotes the first year of the reign of King Richard I.
 R. I.—Rhode Island; Rhode Island Reports.
 R. L.—Revised Laws; Roman Law.
 R. M. Charl. (Ga.)—R. M. Charlton's Georgia Reports.
 R. S.—Revised Statutes.
 R. S. L.—Reading on Statute Law.
 R. t. F.—*See* Rep. t. Finch.
 R. t. Hardw.—*See* Rep. t. Hardw.
 R. t. Holt—*See* Rep. t. Holt.
 R. & M.—*See* Ry. & M.; Russ & M.
 R. & M. C. C.—*See* Ry. & M. C. C.
 R. & R. C. C.—*See* Russ & R. C. C.
 Raff Exr. Guide—Raff's Executors' Guide.
 Raff Pen. Man.—Raff's Pension Manual.
 Raff Road L.—Raff's Road Laws.
 Raff W. Cl. Guide—Raff's War Claimants' Guide.
 Railw. Cas.—Railway Cases.
 Railw. & Can. Cas.—Railway and Canal Cases.
 Ram F.—Ram on Facts.
 Ram Judg.—Ram on Legal Judgment.
 Rand Perp.—Rand on Perpetuities.
 Rand. (Va.)—Randolph's Virginia Reports.
 Rap. Fed. Ref. Dig.—Rapelje's Federal Reference Digest.
 Rap. (N. Y.) Ref. Dig.—Rapelje's New York Reference Digest.
 Rapp Bou. L.—Rapp on Bounty Laws.
 Rast. Ent.—Rastell's Entries.
 Rawle Const.—Rawle on the Constitution.
 Rawle Cov. Tit.—Rawle on Covenants for Title.
 Rawle Mun. Corp.—Rawle on Municipal Corporations.
 Rawle (Pa.)—Rawle's Pennsylvania Reports.
 Ray Med. Jur. Ins.—Ray's Medical Jurisprudence of Insanity.
 Raym. Ch. Dig.—Raymond's Chancery Digest.
 Raym. Ent.—Raymond's Book of Entries.
 Raym. Ld.—Lord Raymond's King's Bench and Common Pleas Reports.
 Raym. T.—T. Raymond's King's Bench Reports.
 Rayn.—Rayner's Title Cases.
 Redd. Mar. Com.—Reddie's Law of Maritime Commerce.
 Redesd. Eq. Pl.—Redesdale's Equity Pleading.
 Redf. Carr.—Redfield on Carriers and other Bailees.
 Redf. Cas. Wills—Redfield's American Cases upon the Law of Wills.
 Redf. (N. Y.) Surr.—Redfield's New York Surrogates' Court Reports.
 Redf. Railw.—Redfield on Railways.
 Redf. Railw. Cas.—Redfield's American Railway Cases.
 Redf. Surr. Co. Pr.—Redfield's Surrogates' Courts Practice.
 Redf. Wills—Redfield on the Law of Wills.
 Redf. & Big. Lead. Cas.—Redfield & Bigelow's Leading Cases.
 Redm. Arb.—Redman on Arbitrations and Awards.
 Redm. & L. Land. & T.—Redman & Lyon on Landlord and Tenant.
 Reed Prac. Sug.—Reed's Practical Suggestions.
 Reeve Desc.—Reeve on Descents.
 Reeve Dom. Rel.—Reeve on Domestic Relations.

- Reeves Hist. Eng. Law.—Reeves' History of English Law.
 Reeves Ship.—Reeves on Shipping.
 Reg.—*Regula*; Rule; *Regina*; Queen; Register.
 Reg. Brev.—*Registrum Brevium*.
 Reg. Cas.—Registration Cases.
 Reg. Gen.—*Regula Generale*.
 Reg. Jud.—*Registrum Judiciale*.
 Reg. Orig.—*Registrum Originale*.
 Reg. Pl.—*Regula Placitandi*.
 Reilly Cairn's Dec.—Reilly's Cairn's Decisions.
 Rep.—Reports; Coke's Reports; The Reporter.
 Rep. Cas. Pr.—Reports of Cases of Practice, Common Pleas.
 Rep. Ch.—Reports in Chancery.
 Rep. Eq.—Reports in Equity.
 Rep. Q. A.—Reports tempore Queen Anne.
 Rep. t. Finch—English Chancery Reports tempore Finch.
 Rep. t. Hardw.—King's Bench Reports tempore Hardwicke.
 Rep. t. Holt—King's Bench Reports tempore Holt.
 Reyn. Steph. Dig. Ev.—Reynold's Stephen's Digest of Evidence.
 Rice Dig. Pat. Cas.—Rice's Digest of Patent Cases.
 Rice (S. C.) Ch.—Rice's South Carolina Chancery Reports.
 Rice (S. C.) L.—Rice's South Carolina Law Reports.
 Rich. (S. C.) Eq.—Richardson's South Carolina Equity Reports.
 Rich. (S. C.) L.—Richardson's South Carolina Law Reports.
 Rich. Pr.—Richardson's King's Bench Practice.
 Rich. Pr. Com. Pl.—Richardson's Common Pleas Practice.
 Rich. Wills—Richardson on Wills.
 Ridd. Sup. Pro.—Riddle on Supplementary Proceedings.
 Ridgw.—Ridgeway's English Chancery and King's Bench Reports.
 Ridgw. App.—Ridgeway's House of Lords Appeals from Ireland.
 Ridgw. L. & S.—Ridgeway, Lapp & Schoales' Irish King's Bench Reports.
 Ridgw. Parl. Cas.—Ridgeway's Cases in Parliament.
 Ridgw. St. Tr.—Ridgeway's State Trials.
 Riley (S. C.) Ch.—Riley's South Carolina Chancery Reports.
 Riley (S. C.) L.—Riley's South Carolina Law Reports.
 Rob. Adm.—Roberts' Admiralty Jurisprudence.
 Rob. C. Adm.—C. Robinson's Admiralty Reports.
 Rob. Dig.—Robertson's Lower Canada Digest.
 Rob. Ecc.—Robertson's Ecclesiastical Reports.
 Rob. Ent.—Robinson's Entries.
 Rob. Fr.—Roberts on Fraud.
 Rob. Fr. Conv.—Roberts on Fraudulent Conveyances.
 Rob. Gavel.—Robinson on Gavelkind.
 Rob. Hawaii—Robinson's Hawaii Reports.
 Rob. Just.—Robinson's Justice of the Peace.
 Rob. (La.)—Robinson's Louisiana Reports.
 Rob. Prac.—Robinson's Practice.
 Rob. Pr. Ch.—Roberts' Principles of Chancery.
 Rob. (Va.)—Robinson's Virginia Reports.
 Rob. W. Adm.—W. Robinson's Admiralty Reports.
 Rob. Wills—Roberts on Wills and Codicils.
 Rob. & J. Dig.—Robinson & Joseph's Digest of Ontario Reports.
 Robb Pat. Cas.—Robb's Patent Cases.
 Robertson App.—Robertson's House of Lords Appeals from Scotland.
 Robinson App.—Robinson's House of Lords Appeals from Scotland.
 Robs. Bankr.—Robson on Law of Bankruptcy.
 Robt. (N. Y.)—Robertson's New York City Superior Court Reports.
 Roc. Ins.—Roccus on Insurance.
 Roche & H. Bankr.—Roche & Hazlett on the Law of Bankruptcy.
 Rockw. Mines—Rockwell on Mines.
 Rockw. Sp. & Mex. L.—Rockwell's Spanish and Mexican Law.
 Rog. Ecc. L.—Rogers on Ecclesiastical Law.
 Rog. Law Road—Rogers' Law of the Road.
 Rog. Mines—Rogers on Mines and Minerals.
 Rog. Rec.—Rogers' New York City Hall Recorder.
 Rol., or Rolle—Rolle's King's Bench Reports.
 Rol. Abr.—Rolle's Abridgment.
 Rom. Cr. L.—Romilly on Criminal Law.
 Rom. Not. Cas.—Romilly's Notes of Cases.
 Root (Conn.)—Root's Connecticut Reports.
 Rop. H. & W.—Roper on Husband and Wife.
 Rop. Leg.—Roper on Legacies.
 Rop. Rev.—Roper on Revocation.
 Ror. Jud. Sale—Rorer on Judicial Sales.
 Rosc. Adm. Pr.—Roscoe on the Law and Practice of the Admiralty Division.
 Rosc. Bills—Roscoe on Bills of Exchange.
 Rosc. Cr. Ev.—Roscoe on Criminal Evidence.
 Rosc. Dig. Ev.—Roscoe's Digest of the Law of Evidence.
 Rosc. Ev. N. P.—Roscoe on Evidence at Nisi Prius.
 Rosc. Pl.—Roscoe on Pleading.
 Rosc. R. Ac.—Roscoe on Real Actions.
 Rosch. Pol. Ec.—Roscher's Political Economy.
 Rose—Rose's Bankruptcy Reports.
 Ross Conv.—Ross' Lectures on Conveyancing.
 Ross Lead. Cas.—Ross' Leading Cases in Commercial Law.
 Ross Vend. & P.—Ross on Vendors and Purchasers.
 Rouse Conv.—Rouse's Practical Conveyancer.
 Rouse Copyh.—Rouse's Copyhold Manual.
 Rowe—Rowe's Parliamentary and Military Cases.
 Rowe Sc. Jur.—Rowe's *Scintilla Juris*.
 Rub.—Rubric.
 Ruffh. St.—Ruffhead's Statutes at Large.
 Running. Eject.—Runnington on Ejectment.
 Running. Stat.—Runnington on Statutes.
 Russ.—Russell's English Chancery Reports.
 Russ. Arb.—Russell on Awards, the Duty and Power of an Arbitrator.
 Russ. Cr. & M.—Russell on Crimes and Misdemeanors.
 Russ. Fact.—Russell on Factors.
 Russ. Merc. Ag.—Russell's Treatise on Mercantile Agency.
 Russ. & Ch. (Nov. Sc.) Eq.—Russell & Chesley's Nova Scotia Equity Reports.
 Russ. & Ch. (Nov. Sc.) L.—Russell & Chesley's Nova Scotia Law Reports.
 Russ. & G. (Nov. Sc.)—Russell & Geldert's Nova Scotia Reports.

Russ. & M.—Russell & Mylne's English Chancery Reports.	Schoul. Bailm.—Schouler on Bailments.
Russ. & R. C. C.—Russell & Ryan's Crown Cases Reserved.	Schoul. Dom. Rel.—Schouler on the Domestic Relations.
Ruth. Inst.—Rutherford's Institutes.	Schoul. Pers. Prop.—Schouler on Personal Property.
Rym. Foed.—Rymer's <i>Foedera</i> .	Sci. fa.— <i>Scire facias</i> .
Ry. & M.—Ryan & Moody's Nisi Prius Cases.	Scott—Scott's English Reports.
Ry. & M. C. C.—Ryan & Moody's Crown Cases Reserved.	Scott Costs—Scott on Costs in the Superior Courts of Common Law.
	Scott Intest. L.—Scott on the Intestate Law.
	Scott N. R.—Scott's New Reports.
	Scott & J. Tel.—Scott & Jarnagin on the Law of Telegraphs.
	Scrib. Dow.—Scribner on Dower.
	Scriv. Copyh.—Scriven on Copyholds.
	Seab. Vend. & P.—Seaborne's Law of Vendors and Purchasers.
	Seat. For.—Seaton's Forms in Chancery.
	Sebast. Dig. Tr. M.—Sebastian's Digest of Cases of Trade Mark.
	Sebast. Tr. M.—Sebastian on the Law of Trade Marks.
	Sedgw. Dam.—Sedgwick on the Measure of Damages.
	Sedgw. Lead. Cas. Dam.—Sedgwick's Leading Cases on the Law of Damages.
	Sedgw. Stat. & Const. L.—Sedgwick on Statutory and Constitutional Law.
	Sel. Cas. Ch.—Select Chancery Cases.
	Sel. Cas. Ev.—Select Cases in Evidence.
	Sel. Cas. N. F.—Select Cases, New Foundland Courts.
	Seld. M. Cl.—Selden's <i>Mare Clausum</i> .
	Seld. Notes—Selden's Notes of Cases.
	Sell. Pr.—Sellon's Practice.
	Selw. N. P.—Selwyn's Nisi Prius.
	Semb.— <i>Semble</i> ; it seems.
	Seq.— <i>Sequentia</i> ; following. <i>Sequitur</i> ; it follows.
	Serg. Att.—Sergeant on Attachments.
	Serg. Const. L.—Sergeant on Constitutional Law.
	Serg. Land L.—Sergeant on the Land Laws of Pennsylvania.
	Serg. Mech. L.—Sergeant's Mechanics' Lien Law.
	Serg. & R. (Pa.)—Sergeant & Rawle's Pennsylvania Reports.
	Sess. Cas.—King's Bench Session Cases.
	Sess. Cas. Sc.—Scotch Court of Session Cases.
	Seton Dec.—Seton on Decrees.
	Sett. Cas.—Settlement Cases.
	Sh.—Shaw's Court of Session Reports, First Series.
	Sh. App.—Shaw's House of Lords, Appeals from Scotland.
	Sh. Dig.—Shaw's Digest of Scotch Decisions.
	Sh. Wils. & C.—Shaw, Wilson & Courtenay's House of Lords Cases.
	Sh. & Dun.—Shaw & Dunlop's Court of Session Reports.
	Sh. & M'L.—Shaw & Maclean's House of Lords Appeal Cases.
	Shand Pr.—Shand's Court of Session Practice.
	Sharps. Dig. L. Ins.—Sharpstein's Digest of Life Insurance Cases.
	Sharsw. Bl.—Sharswood's Blackstone's Commentaries.
	Sharsw. Com. L.—Sharswood's Commercial Law.
	Sharsw. L. Lect.—Sharswood's Law Lectures.
	Sharsw. Leg. Eth.—Sharswood's Legal Ethics.
	Shaw Just.—Shaw's Justiciary Court Cases.
	Shearm. & R. Negl.—Shearman & Redfield on Negligence.
S.—Seal; Section.	
S. C.—Supreme Court; Same Case; <i>Senatus Consultae</i> . See So. Car.	
S. C. C.—See Sel. Cas. Ch.	
S. Just.—See Shaw Just.	
S. L. C. A.—Stuart's Lower Canada Appeal Cases.	
S. P.—Same Point; Same Principle.	
S. Teind—Shaw's Scotch Teind Court Cases.	
S. V. A. R.—Stuart's Lower Canada Vice Admiralty Reports.	
S. & B.—See Smith & Bat.	
S. & D.—See Sh. & Dun.	
S. & L.—See Sch. & L.	
S. & M.—See Sh. & M'L.; Sm. & M.	
S. & R.—See Serg. & R. (Pa.)	
S. & S.—See Sim. & S.	
S. & Sc.—See Sau. & Sc.	
S. & Sm.—Searle & Smith's Probate and Divorce Reports.	
S. & T.—See Swab. & T.	
Salk.—Salkeld's Reports.	
Sand Eq.—Sand's Suit in Equity.	
Sand. Inst.—Sandars' Institutes of Justinian.	
Sand. St. P.—Sanders' State Papers.	
Sand. Us.—Sanders on Uses and Trusts.	
Sandf. Ent.—Sandford on Entails.	
Sandf. (N. Y.)—Sandford's New York City Superior Court Reports.	
Sandf. (N. Y.) Ch.—Sandford's New York Chancery Reports.	
Sans. Ins. Dig.—Sansum's Insurance Digest.	
Sau. & Sc.—Sausse & Scully's Irish Chancery Reports.	
Saund.—Saunders' King's Bench Reports.	
Saund. Neg.—Saunders on Negligence.	
Saund. Pl.—Saunders on Civil Pleading.	
Saund. & C.—Saunders & Cole's Bail Court Reports.	
Sav.—Savile's Common Pleas Reports.	
Sav. Hist. Rom. L.—Savigny's History of the Roman Law.	
Sav. Int. Law—Savigny on International Law.	
Sawy. (U. S.)—Sawyer's U. S. Circuit Court Reports.	
Sax. (N. J.)—Saxton's New Jersey Chancery Reports.	
Say.—Sayer's King's Bench Reports.	
Say. Costs.—Sayer's Law of Costs.	
Sayl. For.—Sayler's American Form Book.	
Sc.—See Ss.	
Sc. Jur.—Scottish Jurist.	
Sc. L. R.—Scottish Law Reporter.	
Sc. Sess. Cas.—Scotch Court of Session Cases.	
Scac.— <i>Scaccaria</i> ; the Exchequer.	
Scam (Ill.)—Scammon's Illinois Reports.	
Sch. & L.—Schoale & Lefroy's Irish Chancery Reports.	
Schalk Jam.—Schalk's Jamaica Reports.	
Scheiff. Pr.—Scheiffer's Practice.	

- Shelf. Copyh.—Shelford on Copyholds.
 Shelf. High.—Shelford on Law of Highway.
 Shelf. Jt. St. Co.—Shelford on the Law of Joint Stock Companies.
 Shelf. Lun.—Shelford on Lunacy.
 Shelf. M. & D.—Shelford on Marriage and Divorce.
 Shelf. Mortm.—Shelford on Mortmain.
 Shelf. Railw.—Shelford on Railways.
 Shelf. R. P. Stat.—Shelford on Real Property Statutes.
 Shelf. Suc. D.—Shelford's Probate, Legacy and Succession Duties.
 Shelf. Tit.—Shelford on Titles.
 Shep. (Ala.) Sel. Cas.—Shepherd's Alabama Select Cases.
 Shep. Touch.—Sheppard's Touchstone.
 Shortt Copyr.—Shortt on Copyright.
 Shortt Lit. & A.—Shortt on Law Relating to Works of Literature and Art.
 Show.—Shower's King's Bench Reports.
 Show. P. C.—Shower's Parliamentary Cases.
 Sid.—Siderfin's King's Bench Reports.
 Sim.—Simons' English Chancery Reports.
 Sim. Des. Pat.—Simonds on Design Patents.
 Sim. N. S.—Simons' English Chancery Reports, New Series.
 Sim. & S.—Simons & Stuart's English Chancery Reports.
 Simp. Inf.—Simpson on Infants.
 Six Circ. Cas.—Cases on the Six Circuits, Irish Nisi Prius.
 Skene Verb. Sig.—Skene *de Verborum Significatione*.
 Skid. Min. Stat.—Skidmore's Mining Statutes.
 Skin.—Skinner's King's Bench Reports.
 Sloan L. & T.—Sloan on Landlord and Tenant.
 Sm. Ac.—Smith's Action at Law.
 Sm. Ch. Pr.—Smith's Chancery Practice.
 Sm. Cont.—Smith on Contracts.
 Sm. Eq. Man.—Smith's Manual of Equity.
 Sm. Ex. Int.—Smith on Executory Interests.
 Sm. For. Med.—Smith's Forensic Medicine.
 Sm. Land. & T.—Smith on Landlord and Tenant.
 Sm. Lead. Cas.—Smith's Leading Cases.
 Sm. Mast. & S.—Smith on Master and Servant.
 Sm. Merc. Law.—Smith on Mercantile Law.
 Sm. Pat.—Smith on the Law of Patents.
 Sm. Prob. L.—Smith's Probate Law.
 Sm. R. & P. Prop.—Smith on Real and Personal Property.
 Sm. Stat.—Smith on Statutory and Constitutional Law.
 Sm. & Bat.—See Smith & Bat.
 Sm. & G.—Smale & Giffard's English Chancery Reports.
 Sm. & M. (Miss.)—Smedes & Marshall's Mississippi Reports.
 Sm. & M. (Miss.) Ch.—Smedes & Marshall's Mississippi Chancery Reports.
 Sm. S. & C. L. & T.—Smith, Soden & Cave on Landlord and Tenant.
 Smith—Smith's King's Bench Reports.
 Smith (Ind.)—Smith's Indiana Reports.
 Smith, E. D. (N. Y.)—E. D. Smith's New York Common Pleas Reports.
 Smith & B. Railw. Cas.—Smith & Bates' Railway Cases.
 Smith & Bat.—Smith & Batty's Irish King's Bench Reports.
 Smyth Exemp.—Smyth on Homesteads and Exemptions.
 Smythe—Smythe's Irish Common Pleas and Exchequer Reports.
 Sneed (Ky.)—Sneed's Kentucky Decisions.
 Sneed (Tenn.)—Sneed's Tennessee Reports.
 Snell Eq.—Snell's Principles of Equity.
 So. Car.—South Carolina; South Carolina Reports.
 So. L. J.—Southern Law Journal.
 So. L. Rev.—Southern Law Review.
 Sol. J.—Solicitors' Journal.
 South. (N. J.)—Southard's New Jersey Reports.
 Spauld. Pr.—Spaulding's Practice.
 Spear Extrad.—Spear on the Law of Extradition.
 Spears (S. C.) Eq.—Spears' South Carolina Equity Reports.
 Spears (S. C.) L.—Spears' South Carolina Law Reports.
 Spel. Feuds—Spelman on Feuds.
 Spel. Gloss.—Spelman's Glossary.
 Spenc. Eq. Jur.—Spence's Equitable Jurisdiction.
 Spenc. (N. J.)—Spencer's New Jersey Reports.
 Spinks—Spinks' Ecclesiastical and Admiralty Reports.
 Spott.—Spottiswoode's Court of Session Reports.
 Spott. St.—Spottiswoode's Styles.
 Sprague (U. S.)—Sprague's U. S. District Court Decisions.
 Ss.—*Scilicet*; to wit.
 St.—See Stat.; Stair Inst.
 St. Ecc. Cas.—Stillingfleet's Ecclesiastical Cases.
 St. Germ. Dr. & S.—St. Germain's Doctor and Student.
 St. Leon. R. P.—St. Leonards (Lord) on Real Property.
 St. Tr.—State Trials.
 Stair—Stair's Court of Session Reports.
 Stair Inst.—Stair's Institutions of the Law of Scotland.
 Stair Pr.—Stair's Principles of the Law of Scotland.
 Stallm. El. & S.—Stallman on Election and Satisfaction.
 Star Ch. Cas.—Star Chamber Cases.
 Stark. Cr. L.—Starkie on Criminal Law.
 Stark. Cr. Pl.—Starkie on Criminal Pleadings.
 Stark. Ev.—Starkie on Evidence.
 Stark. N. P.—Starkie's Nisi Prius Reports.
 Stark. Sland.—Starkie on Slander and Libel.
 Stat.—Statute.
 Stat. at L.—Statutes at Large.
 Stat. Glo.—Statute of Gloucester.
 Stat. Marl. b.—Statute of Marlbridge.
 Stat. Mer.—Statute of Merton.
 Stat. Westm.—Statute of Westminster.
 Stat. Winch.—Statute of Winchester.
 Stath. Abr.—Statham's Abridgment.
 Staunf. P. C. & Pr.—Staunford's Pleas of the Crown and Prerogative.
 Stearn. Real. Ac.—Stearns on Real Actions.
 Steph. Com.—Stephen's Commentaries on English Law.
 Steph. Cr. Dig.—Stephen's Criminal Digest.
 Steph. Cr. L.—Stephen on Criminal Law.
 Steph. Dig. Ev.—Stephen's Digest of the Law of Evidence.
 Steph. Jt. St. Co.—Stephens on the Law and Practice of Joint Stock Companies.

- Steph. (N. B.) Dig.—Stephen's Digest of the New Brunswick Reports.
 Steph. Pl.—Stephen on Pleading.
 Steph. Procur.—Stephens on Procurations.
 Steph. (Queb.) Dig.—Stephen's Quebec Law Digest.
 Steph. Slav.—Stephens on Slavery.
 Stev. Av.—Stevens on Average.
 Stev. Ind. Off.—Steven on Indictable Offenses and Summary Convictions.
 Stev. Stow.—Steven on the Stowage of Ships and their Cargoes.
 Stev. & Ben. Av.—Stevens & Benecke on Average.
 Stew. Adm.—Stewart's Nova Scotia Admiralty Reports.
 Stew. (Ala.)—Stewart's Alabama Reports.
 Stew. (N. J.)—Stewart's New Jersey Equity Reports.
 Stew. (N. J.) Dig.—Stewart's New Jersey Digest.
 Stew. V. Adm.—Stewart's Vice Admiralty Reports, Nova Scotia.
 Stew. & P. (Ala.)—Stewart & Porter's Alabama Reports.
 Stillingfl. Ecc.—Stillingleet's Ecclesiastical Cases.
 Stims. Gloss.—Stimson's Law Glossary.
 Stockt. (N. J.)—Stockton's New Jersey Reports.
 Stokes L. of A.—Stokes' Lien of Attorneys.
 Stone Bu. Soc.—Stone on Building Societies.
 Stone Just.—Stone's Justice of the Peace.
 Stor. & H. Ab.—Storer & Heard on Abortion.
 Story Ag.—Story on Agency.
 Story Bailm.—Story on Bailment.
 Story Bills.—Story on Bills of Exchange.
 Story Conf. L.—Story on Conflict of Laws.
 Story Const.—Story on the Constitution.
 Story Cont.—Story on Contracts.
 Story Eq. Jur.—Story on Equity Jurisprudence.
 Story Eq. Pl.—Story on Equity Pleading.
 Story Part.—Story on Partnership.
 Story Prom. N.—Story on Promissory Notes.
 Story Sale.—Story on Sales of Personal Property.
 Story (U. S.)—Story's U. S. Circuit Court Reports.
 Str.—Strange's Reports.
 Str. Slav.—Stroud on Slavery.
 Strobb. (S. C.) Eq.—Strobbart's South Carolina Equity Reports.
 Strobb. (S. C.) L.—Strobbart's South Carolina Law Reports.
 Stuart (L. C.)—Stuart's Lower Canada King's Bench Reports.
 Stuart (L. C.) Adm.—Stuart's Lower Canada Admiralty Reports.
 Stuart, M. & P.—Stuart, Milne & Peddie's Court of Session Reports.
 Stubb Const. Hist.—Stubb's Constitutional History of England.
 Style—Style's King's Bench Reports.
 Sugd. Pow.—Sugden on Powers.
 Sugd. Prop.—Sugden on Law of Property.
 Sugd. R. P. Stat.—Sugden on Real Property Statutes.
 Sugd. Vend. & P.—Sugden on Vendors and Purchasers.
 Sumn. (U. S.)—Sumner's U. S. Circuit Court Reports.
 Sup. Ct.—Supreme Court.
 Super. Ct.—Superior Court.
 Supp.—Supplement.
 Swab. Adm.—Swabey's Admiralty Reports.
 Swab. & T.—Swabey & Tristram's Probate and Divorce Reports.
 Swan Ex. Man.—Swan's Executors' Manual.
 Swan Just.—Swan on Justices of the Peace.
 Swan Pl. & Prec.—Swan's Pleading and Precedents.
 Swan (Tenn.)—Swan's Tennessee Reports.
 Swanst.—Swanston's English Chancery Reports.
 Sweeny (N. Y.)—Sweeny's New York City Superior Court Reports.
 Sweet Pr. Conv.—Sweet's Precedents in Conveyancing.
 Sweet Wills—Sweet on Wills.
 Swift (Conn.) Dig.—Swift's Connecticut Digest.
 Swift Ev.—Swift on Evidence.
 Swinb. Wills—Swinburne on Wills.
 Swint.—Swinton's Scotch Justiciary Court Reports.
 Syme—Syme's Scotch Justiciary Court Reports.
- T.**
- T.—*Tempore*; in the time of; Title; *see* Trin. T.
 T. B. Monr. (Ky.)—T. B. Monroe's Kentucky Reports.
 T. Jones—T. Jones' King's Bench and Common Pleas Reports.
 T. L.—*Termes de la Ley*.
 T. R.—Term Reports, King's Bench; *Teste Rege*.
 T. Raym.—T. Raymond's Reports.
 T. U. P. Charl. (Ga.)—T. U. P. Charlton's Georgia Reports.
 T. & G.—*See* Tyrw. & G.
 T. & M.—*See* Temp. & M.
 T. & R.—*See* Turn. & R.—
 Tait Ev.—Tait on Evidence.
 Talbot—English Chancery Cases, tempore Talbot.
 Taml.—Tamlyn's English Chancery Reports.
 Taml. Ev.—Tamlyn on Evidence.
 Taml. T. Y.—Tamlyn on Terms for Years.
 Taney (U. S.)—Taney's U. S. Circuit Court Decisions.
 Tapp. Cost—Tapping on the Cost Book.
 Tapp. Mand.—Tapping on Mandamus.
 Tapp. (Ohio)—Tappan's Ohio Common Pleas Reports.
 Taunt.—Taunton's Common Pleas Reports.
 Tayl. Civ. L.—Taylor on Civil Law.
 Tayl. Eq. Jur.—Taylor's Commentaries on Equity Jurisprudence.
 Tayl. Ev.—Taylor on the Law of Evidence.
 Tayl. Gov.—Taylor on Government.
 Tayl. Land. & T.—Taylor on Landlord and Tenant.
 Tayl. L. Gloss.—Taylor's Law Glossary.
 Tayl. Med. Jur.—Taylor on Medical Jurisprudence.
 Tayl. (N. C.)—Taylor's North Carolina Reports.
 Tayl. Pois.—Taylor on Poisons.
 Tayl. (U. C.)—Taylor's Upper Canada King's Bench Reports.
 Tayl. Wills—Taylor on Wills.
 Temp. & M.—Temple & Mew's English Criminal Appeal Reports.
 Tenn.—Tennessee; Tennessee Reports.
 Tenn. Ch.—Tennessee Chancery Reports.
 Term (N. C.)—Term Reports, North Carolina.
 Tex.—Texas; Texas Reports.
 Tex. App.—Texas Court of Appeals Reports.
 Tex. L. J.—Texas Law Journal.
 Th. Br.—*Thesaurus Brevium*

Th. Dig.—Theloall's Digest.	Trem.—Tremaine's Pleas of the Crown.
Thach. (Mass.) Cr. Cas.—Thacher's Massachusetts Criminal Cases.	Trev. Tax. Suc.—Trevor on Taxes on Successions.
Theob. Wills—Theobald on Wills.	Trin. T.—Trinity Term.
Thom. L. C.—Thomas' Leading Cases on Constitutional Law.	Trist. Con. Pr.—Tristram on Continuous Practice.
Thom. Mort.—Thomas on Mortgages.	Troop Verb. Agr.—Troop on the Validity of Verbal Agreements.
Thom. Sc. L.—Thomson's Scotch Law.	Troub. Lim. Part.—Troubat on Limited Partnership.
Thom. U. Jur.—Thomas on Universal Jurisprudence.	Troub. & H. Pr.—Troubat & Haley's Practice.
Thom. Bills—Thomson on Bills and Notes.	Troub. & H. Prec.—Troubat & Haley's Precedents of Indictments.
Thomp. Carr.—Thompson on Carriers of Passengers.	Trow. Dr. & Cr.—Trower's Debtor and Creditor.
Thomp. Corp. Off.—Thompson's Liability of Directors and Officers of Corporations.	Trow. Eq.—Trower's Prevalence of Equity.
Thomp. Ent.—Thompson's Entries.	Tuck. (N. Y.) Surr.—Tucker's New York Surrogates' Court Reports.
Thomp. High.—Thompson on Highways.	Tuck. Pl.—Tucker's Pleading.
Thomp. Homest.—Thompson on Homesteads.	Tuck. Sel. Cas. (N. F.)—Tucker's New Foundland Select Cases.
Thomp. Nat. Bk. Cas.—Thompson's National Bank Cases.	Tud. Cas. M. L.—Tudor's Leading Cases on Mercantile Law.
Thomp. Negl.—Thompson on Negligence, in Relations not Resting in Contract.	Tud. Cas. R. P.—Tudor's Leading Cases on Real Property.
Thomp. Prov. Rem.—Thompson's Provisional Remedies.	Tud. Char. Trusts—Tudor on Charitable Trusts.
Thomp. Stockh.—Thompson's Liability of Stockholders in Corporations.	Turn. Ch. Pr.—Turner on Chancery Practice.
Thomp. Tenn. Cas.—Thompson's Tennessee Cases.	Turn. & R.—Turner & Russell's English Chancery Reports.
Thomp. & C. (N. Y.)—Thompson & Cook's New York Reports.	Twiss Int. Law P.—Twiss on Law of Nations in Time of Peace.
Thoms. (N. S.)—Thomson's Nova Scotia Reports.	Twiss Int. Law W.—Twiss on Law of Nations in time of War.
Thornt. Conv.—Thornton's Conveyancing.	Tyler Am. Ecc. L.—Tyler's American Ecclesiastical Law.
Thr. Fraud—Throop on Frauds.	Tyler Bound.—Tyler's Law of Boundaries, &c.
Thr. Jt. S. Co.—Thring on Joint Stock Companies.	Tyler Eject.—Tyler on Ejectment.
Tidd—Tidd on Practice in King's Bench.	Tyler Fixt.—Tyler on Fixtures.
Tiff. Gov.—Tiffany on Government.	Tyler Inf. & C.—Tyler on Infancy and Coverture.
Tiff. Reg. Tit.—Tiffany on the Registration of Titles.	Tyler Part.—Tyler on Partnership.
Tiff. & B. Trusts—Tiffany & Bullard on Trusts.	Tyler Us.—Tyler on Usury.
Tiff. & S. For.—Tiffany & Smith's Forms.	Tyler (Vt.)—Tyler's Vermont Reports.
Tiff. & S. Pr.—Tiffany & Smith's New York Practice.	Tyrw.—Tyrwhitt's Exchequer Reports.
Tillingh. Prec.—Tillinghast's Precedents.	Tyrw. & G.—Tyrwhitt & Granger's Exchequer Reports.
Tillingh. & S. Pr. & Pl.—Tillinghast & Shearman's Practice and Pleadings.	Tyt. Mil. L.—Tytler's Military Law.
Tillingh. & Y. App.—Tillinghast & Yates on Appeals.	
Tinw.—Tinwald's Court of Session Reports.	
Tit.—Title.	
Toll. Ex.—Toller on Executors.	
Toml. L. Dict.—Tomlin's Jacob's Law Dictionary.	
Toml. Suppl. Brown—Tomlin's Supplement to Brown's Parliament Cases.	
Toth.—Tothill's English Chancery Reports.	
Towle Const.—Towle on the Constitution.	
Towns. Merc. L.—Townsend's Mercantile Law.	
Towns. Pl.—Townshend's Pleading.	
Towns. Pr.—Townshend's Practice.	
Towns. Sl. & L.—Townshend's Slander and Libel.	
Towns. St. Tr.—Townsend's Modern State Trials.	
Tr. Eq.—Treatise of Equity.	
Traill Med. Jur.—Traill's Medical Jurisprudence.	
Train & H. Prec.—Train & Heard's Precedents of Indictments.	
Trans. App.—Transcript Appeals; New York Court of Appeals.	
Treadw. (S. C.)—Treadway's South Carolina Reports.	
	U.
	U. B.—Upper Bench.
	U. B. P.—Upper Bench Precedents.
	U. C. App.—Upper Canada Court of Appeals Reports.
	U. C. C. P.—Upper Canada Common Pleas Reports.
	U. C. Cham.—Upper Canada Chambers Reports.
	U. C. Chan.—Upper Canada Chancery Reports.
	U. C. E. & A.—Upper Canada Error and Appeal Reports.
	U. C. K. B.—Upper Canada King's Bench Reports.
	U. C. L. J.—Upper Canada Law Journal.
	U. C. O. S.—Upper Canada Queen's Bench and Practice Reports, Old Series.
	U. C. Pr.—Upper Canada Practice Reports.
	U. C. Q. B.—Upper Canada Queen's Bench Reports.
	U. K.—United Kingdom.
	U. S.—United States.

U. S. Cr. Dig.—United States Criminal Digest.
 U. S. Dig.—United States Digest.
 U. S. Eq. Dig.—United States Equity Digest.
 U. S. Rev. Stat.—United States Revised Statutes.
 U. S. Stat. at L.—United States Statutes at Large.
 Ulp.—Ulpian's Fragments.
 Umfrev. Off. Cor.—Umfreville's Office of Corner.
 Underh. Torts—Underhill on Torts or Wrongs.
 Underh. Trusts—Underhill on Trusts and Trustees.
 Upton Mar. W. & P.—Upton on Maritime Warfare and Prize.
 Upton Tradem.—Upton on Trademarks.
 Urlin Trust.—Urlin on the Office of Trustee.
 Utah T.—Utah Territory; Utah Territory Reports.

V.

V., or vs.—*Versus*; against; *Vide*; see.
 V. C.—Vice Chancellor.
 V. & B.—See Ves. & B.
 V. & S.—See Vern. & S.
 Va.—Virginia; Virginia Reports.
 Va. Cas.—Virginia Cases.
 Va. L. J.—Virginia Law Journal.
 Val. Com.—Valen's Commentaries.
 Van Heyth. Eq. Dr.—Van Heythusen's Equity Draftsman.
 Van Heyth. Mar. Ev.—Van Heythusen on Marine Evidence.
 Van Ness (U. S.)—Van Ness' U. S. District Court Reports.
 Van Santv. Eq. Pr.—Van Santvoord on Equity Practice.
 Van Santv. Pl.—Van Santvoord's Pleadings.
 Van Santv. Prec.—Van Santvord's Precedents.
 Vand. Jud. Pr.—Vanderlinden's Judicial Practice.
 Vattel—Vattel on the Law of Nations.
 Vaugh.—Vaughan's Common Pleas Reports.
 Vaux.—Vaux's Decisions, Philadelphia Recorder.
 Vend. Ex.—*Venditioni Exponas*.
 Vent.—Ventris' Reports.
 Verm. R.—See Vt.
 Vern.—Vernon's English Chancery Reports.
 Vern. & S.—Vernon & Scriven's Irish King's Bench and House of Lords Reports.
 Verpl. Cont.—Verplanck on Contracts.
 Verpl. Ev.—Verplanck on Evidence.
 Ves.—Vesey Junior's English Chancery Reports.
 Ves. Sr.—Vesey Senior's English Chancery Reports.
 Ves. & B.—Vesey & Beames' English Chancery Reports.
 Vet. Entr.—Old Book of Entries.
 Vet. N. B.—Old *Natura Brevium*.
 Vict. L. R.—Victorian Law Reports.
 Vict. L. R. Eq.—Victorian L. R. Equity.
 Vict. L. R. Ins. Pr. & M.—Victorian L. R. Insolvency, Probate and Matrimonial.
 Vict. L. R. Law.—Victorian L. R. Law.
 Vict. L. R. Min.—Victorian L. R. Mining.
 Vict. L. T.—Victoria Law Times.
 Vid.—Vidian's Entries.
 Vin. Abr.—Viner's Abridgment.
 Vin. Supp.—Viner's Supplement.

Viz.—*Videlicet*; that is to say.
 Von Holst Pol. Hist.—Von Holst's Political and Constitutional History of the United States.
 Von Ih. St. L.—Von Ihering's Struggle for Law.
 Vr. (N. J.)—Vroom's New Jersey Reports.
 Vs.—*Versus*; against.
 Vt.—Vermont; Vermont Reports.

W.

W.—King William; 1 W. I. denotes the first year of the reign of King William I.; Westminster.
 W. Bl.—William Blackstone's King's Bench and Common Pleas Reports.
 W. H. & G.—See Welsby, H. & G.
 W. Jones—W. Jones' King's Bench and Common Pleas Reports.
 W. Kel.—W. Kelynge's King's Bench and Chancery Reports.
 W. N.—Weekly Notes, London.
 W. R.—Weekly Reporter.
 W. Va.—West Virginia; West Virginia Reports.
 W. W. & D.—See Willm. W. & D.
 W. W. & H.—See Willm. W. & H.
 W. & C.—See Wils. & C.
 W. & M.—William and Mary; 1 W. & M. denotes the first year of the reign of William and Mary.
 W. & S.—See Wils. & S.
 Wadd. Dig.—Waddilove's Digest of Ecclesiastical Cases.
 Wade Not.—Wade on the Law of Notice.
 Wade Retro. Laws—Wade on Retroactive Laws.
 Wait Ac. & Def.—Wait's Actions and Defenses.
 Wait L. & P.—Wait's Law and Practice.
 Wait Pr.—Wait's Practice.
 Walf. Part.—Walford on Parties to Actions.
 Walf. Railw.—Walford on Railways.
 Walk. Am. Law—Walker's Introduction to American Law.
 Walk. Ex. & Ad.—Walker's Compendium of the Laws of Executors and Administrators.
 Walk. (Mich.)—Walker's Michigan Chancery Reports.
 Walk. (Miss.)—Walker's Mississippi Reports.
 Walk. Wills—Walkem on the Execution and Revocation of Wills.
 Wall. Jr. (U. S.)—Wallace Junior's U. S. Circuit Court Reports.
 Wall. (Pa.)—Wallace's Legal Intelligencer Reports; Philadelphia Reports.
 Wall. (U. S.)—Wallace's U. S. Supreme Court Reports.
 Wall. (U. S.) C. C.—Wallace's U. S. Circuit Court Reports.
 Wallis—Wallis' Irish Chancery Reports.
 Ward Leg.—Ward on Legacies.
 Ware (U. S.)—Ware's U. S. District Court Reports.
 Warren L. Stud.—Warren's Law Studies.
 Wash. C. C.—Washington's U. S. Circuit Court Reports.
 Wash. L. Rep.—Washington Law Reporter.
 Wash. T.—Washington Territory; Washington Territory Reports.
 Wash. (Va.)—Washington's Virginia Reports.
 Washb. Easem.—Washburn on Easements.

- Washb. Real Prop.**—Washburn on Real Property.
Wash. T.—Washington Territory Reports.
Wash. (U. S.)—Washington's U. S. Circuit Court Reports.
Wash. (Va.)—Washington's Virginia Reports.
Waterm. Cr. Dig.—Waterman's Criminal Digest.
Waterm. Just.—Waterman's Justice.
Waterm. Prob. Pr.—Waterman's Probate Practice.
Waterm. Set-off—Waterman on Set-off.
Waterm. Spec. Perf.—Waterman on the Specific Performance of Contracts.
Waterm. Tresp.—Waterman on Trespass.
Watk. Conv.—Watkins on Conveyancing.
Watk. Copyh.—Watkin on Copyhold.
Watk. Desc.—Watkins on Descent.
Wats. Arb.—Watson on Arbitration.
Wats. Cler. Law—Watson's Clergyman's Law.
Wats. Comp. Eq.—Watson's Practical Compendium of Equity.
Wats. Part.—Watson on Partnership.
Wats. Sher.—Watson on Sheriffs.
Watts (Pa.)—Watts' Pennsylvania Reports.
Watts & S.—Watts & Sergeant's Pennsylvania Reports.
Webb Jud. Act—Webb on the Judicature Act.
Webb Pr.—Webb on Practice in the Supreme Court.
Webs. Pat. Cas.—Webster's English Patent Cases.
Webs. Tr.—Trial of Professor Webster.
Weeks Attor.—Weeks on the Law of Attorneys.
Weeks Depos.—Weeks on the Law of Depositors.
Weight. Mar. & L.—Weightman on Law of Marriage and Legitimacy.
Welf. Eq. Pl.—Welford on Equity Pleading.
Wells Jurisd.—Wells on Jurisdiction.
Wells Mar. W.—Wells on Married Women.
Wells Q. of L. & F.—Wells on Questions of Law and Fact.
Wells Repl.—Wells on Replevin.
Welsby, H. & G.—Welsby, Hurlstone & Gordon's Exchequer Reports.
Welsh—Welsh's Registry Cases.
Wend. (N. Y.)—Wendell's New York Reports.
Went. Off. Ex.—Wentworth's Office of Executor.
Went. Pl.—Wentworth's Pleadings.
Wesk. Ins.—Weskett on Insurance.
West Ext.—West on Extents.
West H. L.—West's House of Lords Reports.
West. Jur.—The Western Jurist.
West L. Jour.—West's Law Journal.
West t. H.—West's English Chancery Reports, tempore Hardwicke.
Westl. Conf. L.—Westlake's Conflict of Laws.
Westl. Pr. Int. Law.—Westlake's Treatise on Private International Law.
Whart. Ag.—Wharton on Agency.
Whart. Conf. L.—Wharton on the Conflict of Laws.
Whart. Conv.—Wharton's Conveyancing.
Whart. Cr. L.—Wharton on American Criminal Law.
Whart. Dig.—Wharton's Digest.
Whart. Ev.—Wharton on Evidence.
Whart. Hom.—Wharton on Homicide.
Whart. Lex.—Wharton's Law Lexicon.
Whart. Max.—Wharton's Legal Maxims.
Whart. Neg.—Wharton on Negligence.
Whart. (Pa.)—Wharton's Pennsylvania Reports.
Whart. Prec. Indict.—Wharton's Precedents of Indictments.
Whart. St. Tr.—Wharton's U. S. State Trials.
Whart. & S. Med. Jur.—Wharton & Stillé on Medical Jurisprudence.
Wheat. Capt.—Wheaton on Maritime Captures and Prizes.
Wheat. Hist. L. N.—Wheaton's History of the Law of Nations.
Wheat. Int. L.—Wheaton on International Law.
Wheat. (U. S.)—Wheaton's U. S. Supreme Court Reports.
Wheel. Abr.—Wheeler's Abridgment.
Wheel. Am. C. L.—Wheeler's American Common Law.
Wheel. Cr. Cas.—Wheeler's Criminal Cases.
Wheel. Slav.—Wheeler on Slavery.
Whish. L. Dict.—Whishaw's Law Dictionary.
Whit. Lien—Whitaker on the Law of Lien.
Whit. Pr.—Whittaker's Practice.
Whit. Stop. Tr.—Whitaker on Stoppage *in Transitu*.
Whit. War P.—Whiting's War Powers.
White & T. Lead. Cas.—White & Tudor's Leading Cases in Equity.
Whitm. Adopt.—Whitmore on Adoption.
Whitm. Bankr. L.—Whitmarsh's Bankrupt Law.
Whitm. Pat. Cas.—Whitman's Patent Cases.
Whitm. Pat. L.—Whitman's Patent Laws.
Whitw. Eq. Pr.—Whitworth's Equity Precedents.
Wigr. Disc.—Wigram on Discovery.
Wigr. Just.—Wigram's Justices' Note Book.
Wigr. & O'H. Wills—Wigram & O'Hara on the Law of Wills.
Wight El. Cas.—Wight's Election Cases.
Wightw.—Wightwick's Exchequer Reports.
Wilberf. Stat. L.—Wilberforce on Statute Law.
Wilc. Mun. Corp.—Wilecock on Municipal Corporations.
Wildm. Int. L.—Wildman's International Law.
Wilk. Lim.—Wilkinson on Limitations.
Wilk. Pub. F.—Wilkinson on Public Funds.
Wilk. Repl.—Wilkinson on Replevin.
Willard Eq. Jur.—Willard's Equity Jurisprudence.
Willard Ex.—Willard on Executors.
Willard Real Est.—Willard on Real Estate.
Willes—Willes' Reports.
Willis Eq.—Willis on Equity Pleadings.
Willis Int.—Willis on Interrogatories.
Willis Trust.—Willis on Trustees.
Willm., W. & D.—Willmore, Wollaston & Davison's Queen's Bench Reports.
Willm., W. & H.—Willmore, Wollaston & Hodges' Queen's Bench Reports.
Wills Cir. Ev.—Wills on Circumstantial Evidence.
Wilm., or Wilmot N. O.—Wilmot's Notes of King's Bench Opinions and Judgments.
Wilm. Mort.—Wilmot on Mortgages.
Wils.—Wilson's King's Bench Reports.
Wils. Arb.—Wilson on Arbitrations.
Wils. Ch.—Wilson's English Chancery Reports.
Wils. Ex.—Wilson's Exchequer Equity Reports.
Wils. Us.—Wilson on Springing Uses.
Wils. & C.—Wilson & Courtenay's House of Lords Reports.

Wils. & S.—Wilson's & Shaw's House of Lords Reports.	Wooddes. Lect.—Wooddeson's Lectures on Law of England.
Winch.—Winch's Reports.	Woodf. Land. & T.—Woodfall on Landlord and Tenant.
Winch Ent.—Winch's Entries.	Woolf. Ins. Stat.—Woolford's Insurance Statutes.
Wing. Max.—Wingate's Maxims.	Woolr. Com.—Woolrych on the Rights of Common.
Winst. (N. C.)—Winston's North Carolina Reports.	Woolr. Com. L.—Woolrych on Commercial and Mercantile Law.
Wis.—Wisconsin; Wisconsin Reports.	Woolr. L. W.—Woolrych's Law of Waters.
Wis. L. N.—The Wisconsin Legal News.	Woolr. Ways—Woolrych on Ways.
Withr. Am. Corp. Cas.—Withrow's American Corporation Cases.	Wools. Int. Law—Woolsey's International Law.
Wm. Rob.—Wm. Robinson's New Admiralty Reports.	Woolw. (U. S.)—Woolworth's U. S. Circuit Court Reports.
Wms. Auc.—Williams on the Law of Auctions.	Wordsw. Jt. St. Co.—Wordsworth on Joint Stock Companies.
Wms. Bankr.—Williams on Law and Practice of Bankruptcy.	Worth. Jur.—Worthington on the Power of Juries to Decide Questions of Law.
Wms. Comm.—Williams' Lectures on Rights of Common.	Worth. Prec. Wills—Worthington's Precedents for Wills.
Wms. Ex.—Williams on Executors.	Wright Cr. Consp.—Wright on Criminal Conspiracies.
Wms. Just.—Williams' Justice of the Peace.	Wright Fr. Soc.—Wright on Friendly Societies.
Wms. L. Dict.—Williams' Law Dictionary.	Wright (Ohio)—Wright's Ohio Reports.
Wms. P.—Peere Williams' English Chancery Reports.	Wright (Pa.)—Wright's Pennsylvania Reports.
Wms. Pers. Prop.—Williams on Personal Property.	Wright Ten.—Wright on Tenures.
Wms. Pet. Ch. & L.—Williams on Law and Practice of Petitions in Chancery and Lunacy.	Wyatt P. R.—Wyatt's Practical Register.
Wms. Pl. & Pr.—Williams' Common Law Pleading and Practice.	Wyom. T.—Wyoming Territory; Wyoming Territory Reports.
Wms. Real Ass.—Williams on Real Assets.	Wythe (Va.)—Wythe's Virginia Chancery Reports.
Wms. Real Prop.—Williams on Real Property.	
Wms. Saund.—Williams' Notes to Saunders' Reports.	
Wms. Seis.—Williams' Lectures on Seisin.	
Wms. Sett.—Williams' Lectures on Settlements.	
Wms. & B. Adm. Pr.—Williams & Bruce's Admiralty Practice.	
Wollast. B. C.—Wollaston's Bail Court Reports.	
Wolf. & B.—Wolferstan & Bristow's Election Cases.	
Wolf. & D.—Wolferstan & Dew's Election Cases.	
Wood Civ. L.—Wood's Institutes of the Civil Law.	
Wood Com. L.—Wood's Institutes of the Common Law.	
Wood Conv.—Wood on Conveyancing.	
Wood F. Ins.—Wood on Fire Insurance.	
Wood H.—Hutton Wood's Decrees in Tithe Cases.	
Wood Inst.—Wood's Institutes of English Law.	
Wood L. & T.—Wood's Landlord and Tenant.	
Wood Mand.—Wood on Mandamus.	
Wood M. & S.—Wood on Master and Servant.	
Wood Nuis.—Wood's Law of Nuisances.	
Wood (U. S.)—Wood's U. S. Circuit Court Reports.	
Woodb. & M. (U. S.)—Woodbury & Minot's U. S. Circuit Court Reports.	
Wooddes. Jur.—Wooddeson's Elements of Jurisprudence.	
	Y.
	Y. B.—Year Book.
	Y. & C.—See Younge & C.
	Y. & C. C. C.—See Younge & Coll. C. C.
	Y. & J.—See Younge & J.
	Yale Min. Cl.—Yale on Mining Claims.
	Yates Sel. Cas.—Yates' New York Select Cases.
	Yeam. Gov.—Yeaman's Study of Government.
	Yeates (Pa.)—Yeates' Pennsylvania Reports.
	Yelv.—Yelverton's King's Bench Reports.
	Yerg. (Tenn.)—Yerger's Tennessee Reports.
	Yool—Yool on Waste, Nuisance and Trespass.
	Younge—Younge's Exchequer Equity Reports.
	Younge & C.—Younge & Collyer's Exchequer Equity Reports.
	Younge & Coll. C. C.—Younge & Collyer's English Chancery Cases.
	Younge & J.—Younge & Jervis' Exchequer Reports.
	Z.
	Zabr. Land L.—Zabriskie's Land Laws.
	Zabr. (N. J.)—Zabriskie's New Jersey Reports.
	Zinn. Lead. Cas.—Zinn's Leading Cases on Trusts.
	Zouch Jur. Adm.—Zouch's Jurisdiction of Admiralty

LAW DICTIONARY.

A.

A, as the first letter of the alphabet is used to distinguish the first page of a book, the first subdivision of an alphabetical list or index, the first foot note on a printed page, &c., from the following ones which are marked b, c, d, etc. For its use as an abbreviation, see TABLE OF ABBREVIATIONS, *ante* p. v.

A, AB.—From, by, of, at, in, on, with. Used in various Latin phrases, such as—

A cœlo usque ad centrum: From the heavens to the centre of the earth.

A consiliis: A counsellor; of counsel.

A fortiori: By (or from) the stronger reason.

A latere: Collateral. A term used in speaking of the succession of property.

A me: From me. (1). A tenure obtained directly from the superior lord. (2). One who unjustly obtains possession of another's property is said to withhold it *a me* the true owner.

A mensa et thoro: From bed and board. A limited divorce or separation by judicial decree. See DIVORCE.

A posteriori: By (or from) the later reason.

A priori: By (or from) the earlier reason.

These two phrases are used, respectively, to designate arguments from effect back to cause, and *vice versa*.

A quo: From which. The court (or judge) below, or from which a cause has been removed, is called the court (or judge) *a quo*.

A retro: In arrear; behind.

A tempore cujus contrarii memoria non existet: From time of which memory to the contrary does not exist.

A verbis legis non est recedendum: From the words of the law there is no receding.

A vinculo matrimonii: From the bonds of matrimony. An absolute divorce dissolving the marriage contract. See DIVORCE.

Ab agendo: From acting. Unable to act by reason of mental, physical or other incapacity.

Ab ante: In advance. 1 Sumn. (U.S.) 308.

Ab assuetis non fit injuria: From that to which one is accustomed no injury arises.

Ab extra: From without.

Ab inconvenienti: From hardship, or inconvenience. An argument founded upon the hardship of the case, and the inconvenience, or disastrous consequences to which a different course of reasoning would lead.

Ab initio: From the beginning. (See RELATION.) An act supposed to be legal when done, may, in the light of its consequences, be said to have been void or illegal *ab initio*. Plowd. 6, a; 11 East 395; 10 Johns. (N. Y.) 253.

Ab intestato: From the intestate. An inheritance from one dying without making a will.

A NOTE, OR A BILL, (in a statute, when means several notes or bills). 8 Com. B. 849.

A RAILROAD LEADING TO MILWAUKEE, (in city ordinance). 24 Minn. 78.

A TRUE BILL, (indorsed on indictment). 17 Minn. 76, 241.

ABACTOR.—LATIN: *ab* and *agere*, to lead away.

A cattle thief. One who steals cattle by the herd or drove, not one beast at a time.

ABANDONMENT.—FRENCH: *abandonnement*.

The surrender, relinquishment, or disclaimer of property rights. Desertion.

§ 1. In marine insurance, where the subject-matter insured is constructively lost to the assured, he cannot call upon the underwriter to settle with him for a total loss without abandoning—that is, relinquishing to the underwriter whatever may be saved—because the property still exists in specie, and there is a prospect, however remote, of its arriving at its destination. As to what is a constructive total loss, see Loss. Abandonment is effected by giving express and unconditional notice to the underwriter within a reasonable time after the assured has received intelligence of the loss, (Smith Merc. L. 382 *et seq.*; Maude & P. Mer. Sh. 413 *et seq.*), and its effect is to transfer the whole property and interest in the thing insured to the underwriter. *Id.* 416. See DERELICTION; NON-USER.

§ 2. In fire insurance.—The principle of abandonment is also applicable in fire insurance, where there are remnants, and sometimes also under stipulations in life policies in favor of creditors. 2 Phill. Ins.

§§ 1490, 1514, 1515; 3 Kent Com. 265; 16 Ohio St. 200.—*Bouvier*.

§ 3. **Of railway.**—In England, the Board of Trade have power to authorize the abandonment of the whole or part of a railway, so as to release the company from all liability to make or work it. The holders of three-fifths of the shares must consent, and provision is made for the compensation of persons damnified. *Hodg. Railw.* 433; *Abandonment of Railways Acts*, 1850, 1867, 1869.

§ 4. **Of children.**—In English criminal law, the offence of abandoning or exposing children under the age of two years is punishable by penal servitude for five years. (*Stat.* 24 and 25 *Vict.* c. 100, § 27; 27 and 28 *Vict.* c. 47.) Similar provisions are to be found in the penal laws of most if not all the States of the Union.

§ 5. **Of wife, or husband.**—The willful departure of the husband or wife from the society of the other and the common home, with an intention never to return or to resume the marital relation. (27 *Conn.* 14.) But where the husband, by his cruelty, compels the wife to leave him, he, not she, is guilty of abandonment. 9 *Cal.* 475; 16 *Md.* 213. *See* DESERTION.

§ 6. **Of property rights.**—Property may be abandoned without transferring it to another, in which case the title remains in *abeyance* (*q. v.*) until reduction to possession by some other person. In this way an invention or literary work may be abandoned to the public, or a wrecked vessel may be abandoned by the owner in such a manner as to free him from liability for injuries to other vessels occasioned by the wreck, though it may lie in navigable waters. But mere non-user does not ordinarily amount to abandonment. 16 *Barb.* (N. Y.) 150; 24 *Id.* 44; 10 *Pick.* (Mass.) 310; 23 *Id.* 141; 3 *Strobh.* (S. C.) 224; 2 *Wash. Real Prop.* 83. *See* DERELICT.

ABANDONMENT, (of lands). 3 *Yeates* (Pa.) 200, 269; 4 *Id.* 330, 534; 2 *Binn.* (Pa.) 124; 1 *Serg. & R.* (Pa.) 120, 519; 2 *Id.* 410; 4 *Id.* 431; 11 *Id.* 266, 337, 340; 12 *Id.* 149; 5 *Watts* (Pa.) 173.

— (of improvement on land). 5 *Watts* (Pa.) 13.

— (of settlement on lands). 1 *Watts* (Pa.) 48; 1 *Serg. & R.* (Pa.) 120; 15 *Wend.* (N. Y.) 171; 5 *Wheel. Am. C. L.* 18.

— (of application for land). 2 *Serg. & R.* (Pa.) 378; 5 *Id.* 215.

— (of rights under land warrant). 23 *Pa. St.* 271.

— (of a contract). 4 *Bro. C. C.* 469; 1 *Sax.* (N. J.) 280, 328; 1 *Johns.* (N. Y.) 429; 5 *Ves.* 818.

— (of an easement). 6 *Conn.* 289; 16 *Wend.* (N. Y.) 535; 16 *Barb.* (N. Y.) 184; 5

Har. & J. (Md.) 467, 476; 10 *Pick.* (Mass.) 310; 9 *Metc.* (Mass.) 395; 3 *McCord.* (S. C.) 194; 12 *Ves.* 265; 3 *Mas.* (U. S.) 276; 3 *Kent. Com.* 448; 3 *Campb.* 514; 3 *Barn. & C.* 332; 5 *Dow. & Ry.* 234; 5 *Gray* (Mass.) 409; 10 *Humph.* (Tenn.) 165.

— (of a mill site). 34 *Me.* 394; 17 *Mass.* 297; 23 *Pick.* (Mass.) 216; 4 *McCord* (S. C.) 96; 7 *Bing.* 682.

— (of a mining claim). 6 *Cal.* 510.

— (of patent for invention). 7 *Pet.* (U. S.) 292; 1 *Story* (U. S.) 280; 4 *Mas.* (U. S.) 111.

— (of office). 64 *Mo.* 89.

— (of personal property). 1 *Penn.* (N. J.) 395.

— (of a road). 2 *Green* (N. J.) 254; 12 *Wend.* (N. Y.) 371.

— (of a suit). 12 *East* 508, 588.

— (of a trust fund). 3 *Yerg.* (Tenn.) 258.

— (of a vessel). 5 *Binn.* (Pa.) 547.

— (of wife). 9 *Cal.* 475; 27 *Conn.* 14; 60 *Ind.* 275; 16 *Md.* 213.

— (by insured). 1 *Curt.* (U. S.) 148; 3 *Gill & J.* (Md.) 450; 1 *Gray* (Mass.) 154, 371.

ABATE, (legacies to, when). 1 *South.* (N. J.) 423.

— (suit shall). 1 *Halst.* (N. J.) 433; 1 *South.* (N. J.) 376; 6 *Conn.* 130; 1 *Wheel. Am. C. L.* 70.

ABATED, (as respects a nuisance, defined). 50 *Ga.* 132.

ABATEMENT.—**NORMAN-FRENCH:** *abatement* from *abatre*, to throw down, destroy. (*Britton*, 122 b. 155; *Co. Litt.* 134 b. 277 a.) In treating of abatement in the second sense (*infra*, § 2), *Britton* sometimes spells the word *embatre*, *embatement*. (*Britton*, 161 *et seq.*) which makes it possible that it was a different word from abatement in the other meanings, and signified intrusion rather than destruction of the estate.

§ 1. **Of nuisance.**—To abate a nuisance is to remove it: thus, if a house or wall is erected by my neighbor so near to mine that it stops my ancient lights, I may enter his land and pull it down; or, if an obstruction is unlawfully placed in a highway, I may cut it down or remove it. Abatement is a remedy by act of the party (*see* REMEDY); it must be effected peaceably, and (in the case of a private nuisance) without doing more damage than is necessary. 3 *Steph. Com.* 244.

§ 2. **Of land.**—In the law of real property, where a person dies seised of land, and a stranger who has no right makes entry and gets possession of the freehold before the heir or devisee enters, this is called an abatement, and the stranger is an abator. (*Co. Litt.* 277 a.) The person entitled has, of course, a right of action to recover the land. *See* DEFORCEMENT; DISSEISIN.

§ 3. **Of legacies, &c.**—In the administration of a testator's estate, abatement is where the amount payable to a legatee or appointee has to be reduced because there

is not enough to pay all the legatees or appointees of the same class in full, or because the claimant is not entitled to participate in a certain part of the estate. Thus, where the estate of a testator, after payment of his debts and specific legacies, is insufficient to pay all the general legacies, they must abate or be reduced in proportion to their respective amounts. *Wms. Exr.* 1260, 1271; *Wats. Comp. Eq.* 534, 1244.

§ 4. **Of charitable legacies.**—In England, if a testator, whose estate consists both of pure and impure personalty, gives a legacy to a charity without directing it to be paid out of his pure personalty, the legacy must abate in the proportion which the impure personalty bears to the whole residuary personal estate—(thus, whole estate, £1500 : pure personalty, £1000 :: amount of legacy, £300 : amount payable to charity, £200); because the charity cannot participate in the impure personalty, owing to the provisions of the Charitable Uses Act, commonly called the Mortmain Act. *Wats. Comp. Eq.* 54.

§ 5. **Of action.**—In procedure, abatement is where an action is put an end to and destroyed by the death of one of the parties, or some other event which makes it impossible to continue the action. Thus, an action for assault abates on the death of either plaintiff or defendant, because the right of action, or liability (as the case may be), does not survive to his representatives. (*See ACTIO PERSONALIS MORITUR CUM PERSONA*). Formerly, almost every change of interest *pendente lite* caused an abatement, which could be cured in cases where the right of action or liability survived, by Revivor, *Scire Facias*, or Suggestion (*q. v.*); but this is no longer the case. 7 Ch. D. 411; 3 Steph. Com. 591; Smith Ac. (11th ed.) 194; U. S. Dig. tit. Abatement. As to pleas in abatement, *see* PLEA.

§ 6. **In chancery practice**, abatement is the suspension of all proceedings in a suit from the want of proper parties capable of proceeding therein. Unlike an abatement at law, the suit is not entirely dead, but may be revived by supplemental bill in the nature of a bill of revivor.—*Bouvier*.

§ 7. **Of duties on imports.**—Where goods are damaged during importation, or while in store, a portion of the duties is deducted, or, if already paid, refunded. This is called in mercantile law an abatement of the duties.

§ 8. **Of taxes.**—In like manner, in some jurisdictions, taxes are subject to abatement in certain cases, by decreasing the amount, refunding, &c.

ABATOR.—(1) One who removes or throws down a nuisance. (2) A stranger who enters without right into a freehold after the death of its former possessor, and before his heirs or devisees. *See* ABATEMENT, § 2.

ABATUDA.—Anything diminished. *Moneta Abatuda* is money clipped or diminished in value.—*Cowel*.

ABAVIA.—A great-grandmother's mother.

ABAVUS.—A great-grandfather's father.

ABBOTTS, PRIORS, &c., (do not include bishops). *Wilberf. Stat. L.* 183.

ABBREVIATION.—A shortening or condensing of words or phrases for the purpose of saving space or time. *See* TABLE OF ABBREVIATIONS, *ante* p. v.

Abbreviationum, ille numerus et sensus accipiendus est, ut concessio non sit inanis: In abbreviations, such number and sense is to be taken, that the grant be not made void.

ABBROCHMENT, or ABBROACHMENT.—The act of forestalling a market, by buying up at wholesale the merchandise intended to be sold there, for the purpose of selling it at retail. *See* FORESTALLING.

ABDICATION.—*LATIN:* *abdicare*, to renounce.

Abdication is where a sovereign gives up his throne or government, either (1) so that the abdication operates in favor of his successor, or (2) so that the throne is vacant, and a successor has to be appointed. A constructive abdication of the latter kind took place on the revolution of 1688. 1 Bl. Com. 211; 4 *Id.* 78. *See* RESIGNATION; CONSTRUCTIVE.

ABDUCTION.—*LATIN:* *ab* and *ducere*, to lead away.

The act of taking and carrying away a human being by fraud, persuasion or force.

§ 1. **In private or civil law**, abduction is the act of taking away a man's wife by violence or persuasion. For this injury an action lies, formerly known as an action of trespass *de uxore raptâ et abductâ*. 3 Steph. Com. 437.

§ 2. In criminal law, abduction is the act of taking away or detaining a woman, either against her own will, or (in the case of a woman under age) against the will of her parents or any other person having the lawful charge of her, for the purpose of marriage, concubinage or prostitution. In England, this criminal offence is of three kinds, viz., (1) kidnapping; (2) carrying away infant females under sixteen; and (3) stealing heiresses. Stat. 24 and 25 Vict. c. 100, § 53 *et seq.*; 1 Russ. Cr. 883; Steph. Cr. Dig. 177.

ABDUCTION, (what is, under N. Y. statute). 8 Barb. (N. Y.) 603.

—— (of child). 2 Chit. Bl. Com. 140.

—— (of woman for purposes of prostitution). 8 Iowa 447; 12 Metc. (Mass.) 93; 8 Barb. (N. Y.) 603; 6 Park. (N. Y.) Cr. 129.

—— (of married woman). Stat. 3 Edw. I. c. 13; 3 Steph. Com. 437; 3 Sharsw. Bl. Com. 139.

—— (of voter). Stat. 17 and 18 Vict. c. 102.

ABEARANCE.—Behavior, conduct. A recognizance for good abearance, is a recognizance for good behavior.

ABEREMURDER.—A plain or downright murder, as distinguished from the less heinous crime of manslaughter or chance medley.

ABET-ABETTOR.—OLD FRENCH: *à* and *beter*, to bait or excite an animal. Skeat, Etym. Dict. s. v.

To abet is to incite, or encourage a person to commit a crime; an abettor is a person who, being present or in the neighborhood, incites another to commit a crime, and thus becomes a principal in the offence. (4 Bl. Com. 34. See PRINCIPAL). The abettor must be present at the commission of the offence, which distinguishes him from an accessory, who, though concerned in the crime, is not then present. See ACCESSORY.

ABETTING, (in a verdict). 4 Burr. 2078, 2082. — (an offence, makes party principal in second degree). 3 Yeates (Pa.) 386.

ABETTOR, (distinguished from accessory). 12 Wheat. (U. S.) 460; 1 Hall (N. Y.) 446; 13 Mo. 382; 1 Wis. 159.

ABEYANCE.—NORMAN-FRENCH: *abeyance*, *abaience*, from *baer*, *bayer*, to gape, to expect. Co. Litt. 842 b; Loysel, Gloss. s. v.; Diez. i. 44.

In expectation or contemplation of law.

§ 1. Of estate.—A hereditament or other right is said to be in abeyance when it exists only in contemplation of law, because there is no person *in esse* in whom it is vested, although the law considers it

as always potentially existing. Litt. §§ 645-647; 2 Bl. Com. 107; 1 Steph. Com. 236; Fearné Cont. Rem. 353, *et seq.*

§ 2. Of glebe.—Thus, in England, the fee-simple in the glebe of a church is in perpetual abeyance, for it is not in the patron, nor the ordinary, nor the parson. Again, when the parson of a church dies, the freehold of the glebe is in no one during the time that the parsonage is void, and is therefore said to be in abeyance until another is made parson. Litt. § 647. As to abeyance of an estate tail, see *Id.* §§ 649 *et seq.*

§ 3. Of dignity.—A dignity is said to be in abeyance when there is for a time no person entitled to it. Thus, where an earl dies, leaving only daughters, the dignity is in abeyance until the king confers it upon one of them. Co. Litt. 165 a; 2 Bl. Com. 216.

ABIDE, (by order of court, bond to). 8 Cush. (Mass.) 294, 297.

—— (by a decision). 108 Mass. 585.

—— (by an award). 48 N. H. 36.

ABIDING IN SERVICE, (in a statute). 4 East 353.

ABIGEUS.—An abactor, (*q. v.*)

ABILITY, (to pay). Coxe (N. J.) 48.

—— (of father to maintain children). 1 Mad. Ch. 343; 1 Cox. 80; Coop. 53; 3 Atk. 123.

ABISHERING, or ABISHERSING.—Quit of ameracements. It originally signified a forfeiture or amercement, and is more properly *mishering*, *mishersing*, or *miskering*, according to Spelman. It has since been termed a liberty of freedom, because, wherever this word is used in a grant or charter, the persons to whom the grant is made have the forfeitures and ameracements of all others, and are themselves free from the control of any within their fee.

ABJURATION.—LATIN: *ab*, from, and *juro*, to swear.

A foreswearing or renouncing by oath.

§ 1. To abjure the realm was to take a perpetual oath of banishment; abjuration was “a deportation for ever into a forreine land,” and was a civil death, (Co. Litt. 133a,) until it was abolished by stat. 21 Jac. 1, c. 28. 4 Bl. Com. 133.

§ 2. The oath of abjuration, by which members of parliament and public officials were required to abjure or renounce the Pretender, was abolished by stat. 21 and 22 Vict. c. 48, and 29 and 30 Vict. c. 19; 2 Steph. Com. 335, 401.

§ 3. Abjuration of allegiance.—An alien seeking naturalization in the United States, is required to renounce and abjure, on oath or affirmation, all allegiance to any foreign prince, and particularly the sovereign whose subject he has heretofore been.

ABLE, (promise to pay when). 3 Esp. 159; 4 *Id.* 36; 2 Stark. 88; 3 Bing. 638; 6 Barn. & C.

603; 2 Moo. & P. 581; 2 Serg. & R. (Pa.) 208; 2 H. Bl. 116; 1 Esp. 282; 4 Ves. Jr. 372; 1 Harr. Dig. 471.

ABLE, (in a statute providing for furnishing nurses to an infected person). 67 Me. 370.

ABNEPOS.—The grandson of a grandson or granddaughter.

ABNEPTIS.—The granddaughter of a grandson or granddaughter.

ABODE, (place of). 7 Barn. & C. 314; 1 Watts (Pa.) 51; 2 Id. 412. See **DOMICILE**; **RESIDENCE**.

ABORDAGE.—Collision between vessels. See **COLLISION**.

ABORTION.—**LATIN**: *abortio*.

A miscarriage, or the premature expulsion of the fetus from the uterus, before the term of gestation is completed. The offences of producing or attempting to produce an abortion, and of administering drugs to that end, are now, both in England and America, specifically provided for and punished by statute. Formerly it was essential to the offence that the child had quickened, but this is no longer the case. See 10 How. (N. Y.) Pr. 224; also **MISCARRIAGE**.

ABOUT, (defined). 4 Zab. (N. J.) 753; Pet. C. C. 49.

— (in description, in a deed). 5 Me. 482; 4 Id. 290.

— (a certain time, in a deed). 5 Greenl. (Me.) 482.

— (a certain sum, in promise to pay). 22 Me. 121.

— (a certain distance, in an entry of land). 2 Wheat. (U. S.) 206, 316; 5 Cranch. (U. S.) 191.

— (in a report). 1 Green (N. J.) 103.

— (in a verdict). 2 Green (N. J.) 123.

— (the month of Sept., in Narr. for trespass). South. (N. J.) 95.

— (8 tons, in contract). 13 East 410; 2 Green (N. J.) 123.

— (400 tons, in writ of replevin). 13 Wend. (N. Y.) 496.

— (8 weeks, prisoner off limits). South. (N. J.) 499.

— (9 weeks, ship out in policy). 1 Johns. (N. Y.) Cas. 408.

— (— dollars, in deed of assignment). 5 Serg. & R. (Pa.) 402.

— (— acres, in a deed). 1 Pet. C. C. (U. S.) 49, 58; Sugd. Vend. P. 220; 2 Swanst. 223; 1 Hov. Sup. Ves. 495, 496; 2 Wheat. (U. S.) 211, 323; 3 Call (Va.) 218; 11 Wheat. (U. S.) 223.

— (30 miles above a creek, in a warrant). 11 Wheat. (U. S.) 223; 2 Litt. (Ky.) 162; 2 Inst. 318.

— (350 quarters more or less, in agreement to purchase). 2 Barn. & Ad. 106.

— (the neck, in an indictment). 5 Car. & P. 121.

ABRIDGMENT.—**FRENCH**: *abregement*.

§ 1. **In general**.—An epitome or compend of another and more extensive work, compressing the latter into a smaller compass. If fairly compiled, an abridgment of a book is not a violation of copyright; but if colorable, merely, it may be enjoined.

§ 2. **Abridgments of the law** are brief digests of the law, arranged alphabetically. The oldest are those of Fitzherbert, Brooke and Rolle, the more modern those of Viner, Comyns and Bacon. (1 Steph. Com. 51.) The term "digest" has now supplanted that of "abridgment."

ABRIDGMENT, (of a book). Amb. 403, 696; 2 Atk. 143; 1 Bro. C. C. 451; 4 McLean (U. S.) 306, 310; 5 Ves. 709.

ABROGATE.—**LATIN**: *ab*, from, and *rogo*, to ask.

To annul, or destroy. To abrogate is to annul or repeal an order or rule issued by a subordinate authority; *e.g.* a rule of practice issued by the judges of a court. To repeal a former law, by legislative act, or by usage. See **REPEAL**.

ABSCOND.—**LATIN**: *abscondo*, to hide away.

To leave one's ordinary residence or country, or to remain concealed therein, to avoid legal proceedings. 2 Ch. D. 220; 11 Id. 298.

§ 1. The Absconding Debtors Act, 1870 (33 and 34 Vict. c. 76), is intended to prevent "insolvent debtors departing for foreign countries before the necessary proceedings can be taken to make them bankrupt," and for that purpose enables a bankruptcy court to issue a warrant for the arrest of the debtor before the petition for adjudication has been presented. See **BANKRUPTCY**; **DEBTORS ACT**.

§ 2. The laws of most of the States of the Union authorize the attachment of property belonging to absconding debtors, and declare who shall be deemed such.

ABSCONDED, (in a plea). 2 Hen. & M. (Va.) 309; 1 Wheel. Am. C. L. 68.

ABSCONDING DEBTOR, (who is, under attachment acts). 5 Port. (Ala.) 77; 1 Ala. 199; 2 Root (Conn.) 133; 5 Conn. 117; 43 Ill. 185; 7 Md. 209; 1 Green (N. J.) 250; 2 Cal. (N. Y.) 318; 15 Johns. (N. Y.) 196; 27 Vt. 118; 1 Wheel. Am. C. L. 105.

ABSENCE.—Being away from one's usual residence or domicile. When continued for a long time (usually seven years) it raises a presumption of death. It is also

one of the exceptions which stop the running of statutes of limitation.*

ABSENCE, (not equivalent to non-residence). 7 Halst. (N. J.) 84.

— (in divorce petition). L. R. 1 P. & D. 169.

— (of judge). 3 Dall. (U. S.) 19, 36.

— (of justice). 2 Green (N. J.) 590.

— (of plaintiff). Penn. (N. J.) 653; Coxe (N. J.) 166.

— (of defendant). South. (N. J.) 289; 3 Halst. (N. J.) 60.

— (of prisoner). 12 Wend. (N. Y.) 348; 7 Cow. (N. Y.) 525.

— (of witness). South. (N. J.) 533.

— (from the state, in State constitution). 26 La. Ann. 568; 21 Am. Rep. 551; 6 Allen (Mass.) 324; 100 Mass. 170.

— (on public business, in statute of limitations). 31 Ind. 373.

— (without leave, not of itself the crime of wilful desertion). 115 Mass. 336.

ABSENT, (in poor law). 71 Me. 456.

ABSENT DEBTOR, (under attachment act). 2 Cal. (N. Y.) 318; 1 Sandf. (N. Y.) Ch. 144.

— (who included). 1 Cranch C. C. 300; 44 N. H. 306.

ABSENT DEFENDANT, (in a statute). 104 Mass. 369.

ABSENT FROM THE ISLAND, (defined). 13 Wend. (N. Y.) 418.

ABSENTEE.—An owner of leased land who resides more or less permanently in a country other than that in which such land is situate.

ABSENTEE, (who is). 18 La. Ann. 695.

— (under attachment law). 30 La. An. Part II. 878.

— (in confiscation act). 1 Mass. 385.

ABSENTING HIMSELF, (in apprentices indenture). 3 Car. & P. 583.

— (in affidavit for an attachment). 2 Harr. (N. J.) 154.

ABSENTS HIMSELF, (in bankrupt law). 1 Campb. 152.

ABSOILE—ASSOILE.—To pardon, or set free; used with respect to deliverance from excommunication.—*Cowell; Kelham.*

* In English law absence, generally, is of a fivefold kind. (1) A *necessary absence*, as in banished or transported persons. (2) *Necessary and voluntary*, as upon the account of the commonwealth, or in the service of the church. (3) A *probable absence*, according to the civilians, as that of students on the score of study. (4) *Entirely voluntary*, on account of trade, merchandise and the like. (5) *Absence cum dolo et culpa*, as not appearing to a writ, *subpoena*, citation, &c., or to delay or defeat creditors, or avoiding arrest, either on civil or criminal process. *Absence beyond seas* is absence from the United Kingdom and the adjacent islands belonging to her Majesty. It was formerly a disability in a plaintiff under the Statutes of Limitations entitling him to an

ABSOLUTE.—LATIN: *absolutus*.

Complete, final, perfect, unconditional, unrestricted; as an unconditional conveyance; an estate without condition or qualification; a bond without condition, &c.

In English practice, a decree, order, rule, declaration, &c., is said to be absolute either (1) when it is to take effect at once (absolute in the first instance); or (2) when it was originally made provisional and no one has satisfied the court that it ought not to take effect. See DECREE; FORECLOSURE; NISI.

ABSOLUTE, (in a devise). 71 Pa. St. 483.

— (in statute restricting suspension of absolute ownership). 7 Barb. (N. Y.) 590.

— (property). 2 Kent Com. 347.

— (rights). 1 Chit. Pl. 364; 1 Chit. Pr. 32.

— (rule). 1 Pow. Mort. 125.

ABSOLUTE ESTATE, (defined). 32 Ala. 637; 71 Pa. St. 483.

ABSOLUTE FEE SIMPLE, (distinguished from "fee simple," *q. v.*) 2 N. Y. 357; 12 Johns. (N. Y.) 177.

ABSOLUTE INHERITABLE TITLE TO LAND, (in contract to convey). 107 Mass. 590.

ABSOLUTION.—

§ 1. In Civil Law.—The sentence of a tribunal or judge declaring the innocence of one accused of a crime.

§ 2. In Canon Law.—The remission of sin repented of by act of the clergy. In the Roman Church it is *absolute* remission; in the Greek Church it is *deprecatory*; in Protestant Churches it is chiefly a mere release from liability to ecclesiastical discipline or punishment.

ABSOLUTISM.—A system of government, either monarchical or democratic, in which the governing power is vested absolutely, in one or more persons, or in a majority, unchecked by any existing law or law making power.

extension of time after his return; but this is so no longer. (Stat. 19 and 20 Vict. c. 97, § 10; 37 and 38 Vict. c. 57, § 4.) In the case of a person against whom a claim exists in respect of a simple contract or tort being absent beyond seas at the time of the right of action accruing, the plaintiff may bring his action within the time limited for that purpose after the defendant's return. (Stat. 4 and 5 Anne, c. 3, § 19, (commonly cited as 4 Anne, c. 16); 19 and 20 Vict. c. 97, §§ 11, 12.) Absence beyond seas entitles an intending appellant to the House of Lords to an extension of the year usually allowed for appealing, but not to more than five years in the whole. Standing Orders as to Appeals, May, 1878.

ABSQUE.—LATIN.

Without. Used chiefly in such phrases as—

Absque aliquo inde redendo: Without rendering anything therefrom. A grant from the Crown reserving no rent. 2 Rolle, Abr. 502.

Absque hoc: Without this. Technical words of exception which were made use of in a special traverse; as, the defendant pleads that such a thing was done at B., &c., *without this* (*absque hoc*). Bull. N. P. 93; 6 Com. Dig. 167; 1 Saund. 21; Dyer. 112.

Absque impetitione vasti: Without impeachment of waste. A reservation frequently made to a tenant for life, that no man shall *impetere* or sue him for waste committed.

Absque tali causa: Without such cause. Formal words in the new obsolete replication *de injuriâ*.

ABSTRACT OF TITLE.—A document containing an epitome of the deeds, devises, and incumbrances affecting the title to land, and upon which such title depends.

In England (in the absence of a stipulation to the contrary), the purchaser is entitled to receive an abstract of title from the vendor, to facilitate his examination of the title, and with this object it is arranged in a peculiar manner.*

In the United States the duty of furnishing the abstract is not so definitely imposed upon the vendor, but the expenses incurred by the purchaser in its preparation are in many instances paid by the vendor, or deducted from the purchase money. This, however, is usually a matter of agreement, and not regulated by statute.

Abundans cautela non nocet: Extreme care does no harm. Under this principle

*The brief paper on which it is written is divided into columns or margins, and every margin is appropriated to a particular kind of clause in the deeds to be abstracted; thus the description of the deed and the names of the parties are placed in the first or outer margin; the recitals in the second margin, the testatum in the first margin, the parcels in the fourth margin, the habendum and covenants in the third margin, &c.; all verbiage is omitted, and certain clauses of frequent occurrence in identical terms ("Common Forms") are represented by abbreviations. The abstract is verified by the production of the original deeds, certified copies of the court rolls, probates of wills, statutory declarations, &c. (Dart. Vend. & P. 310.) A document from which the abstract is made is said to be abstracted in chief, in opposition to those documents which are abstracted indirectly by being introduced in the recitals of other abstracted instruments. (Dart. 299.) Thus, if

the insertion in a conveyance, or other instrument, of superfluous words designed to aid in expressing the party's intention, is not fatal to the instrument if, read without them, it would be valid.

ABUSE.—LATIN: *ab*, from, and *utere*, to use.

An improper use of a person or thing.

§ 1. **Abuse of distress**, is the using an animal or chattel distrained. This makes the distrainer liable as for a conversion.

§ 2. **Abuse of process.** When an adversary, through the malicious and unfounded use of some regular legal proceeding, obtains some advantage over his opponent, there is said to be an abuse of process.

§ 3. **In Civil Law**, the borrower of a chattel which, in its nature, cannot be used without consuming it, such as wine or grain, is said to abuse the thing borrowed if he uses it.

§ 4. **Abuse of female child.** See RAPE.

ABUSE, (of corporate franchise). 3 Pittsb. (Pa.) 20.

— (in statute punishing carnal knowledge of female child). 58 Ala. 376.

ABUT—ABUTTALS.—FRENCH: *abou* *tir*, to adjoin; *à*, "to," and *bout*, "end."

To border on. To reach, or touch. Land abuts on that by which it is bounded, *e. g.* on another piece of land belonging to a different owner. In a deed the description of the boundaries of the land conveyed or leased, &c., is sometimes called the abutments. (For the cases on the old rule, that in an action of trespass the abutments

an abstract is made from a conveyance from A. to B., in which is recited a conveyance from Z. to A., the conveyance from A. to B. is said to be abstracted in chief, while that from Z. to A. is not. An abstract is said to be "perfect" if it is as complete as the vendor can make it at the time of delivery; sometimes a "perfect abstract" means one which shows a perfect title, that is, when it shows that the purchaser will acquire the legal and equitable estates free from incumbrances. (*Id.* 281.) Of course where a person's title to property consists wholly of entries in registers (*e. g.* a copyright or registered land) no abstract is required. Under the Stamp Acts, when an adjudication stamp is applied for, the application is generally required to be accompanied by an abstract of the instrument to be stamped. (Stamp Act, 1870, § 20; Dow. Stamp Acts, 114.) This abstract is made out on a printed form furnished by the commissioners.

should be set out, *see* Fish. Dig. Trespass, 13 a.)

ABUT, (in real property law). Cro. Jac. 184; 2 Chit. Pl. 660.

ABUTMENT, (of a bridge). 3 Harr. (N. J.) 112.

ABUTTALS, (in pleading). 8 East 85; 1 Saund. 112 n.; 6 Mod. 72; Com. Dig. 26, 42; Bac. Abr. 13.

ABUTTING, (when estate is). 12 Mass. 408.

AC ETIAM.—And also. A phrase used in pleading to introduce the statement of the real cause of action, after a fictitious cause of action, inserted for the purpose of giving the court jurisdiction, has been stated. *See* Burg. Ins. 149; 3 Sharsw. Bl. 288.—*Bouvier*.

ACADEMY, (subscription for). 11 Mass. 117.

ACCAPITARE.—To pay relief to lords of manors. *Capituli domino accapitare, i. e.* to pay a relief, homage, or obedience to the chief lord on becoming his vassal.

ACCAPITUM.—Money paid by a vassal upon his admission to a feud; the relief due to the chief lord.

ACCEDAS AD CURIAM.—That you go to the court. An original writ to the sheriff, issued out of Chancery, where a man has received false judgment in a Hundred Court or Court Baron, or justice has been delayed.

ACCEDAS AD VICECOMITEM.—That you go to the sheriff. Where the sheriff has a writ called a *pone* delivered to him, but suppresses it, this writ is sent to the coroner, commanding him to deliver a writ to the sheriff.

ACCEDE, (in a letter offering sale of land). 6 Munf. (Va.) 86.

ACCELERATE.—In English law, an estate, interest or other right is said to be accelerated when it comes into possession (or is likely to come into possession) sooner than it otherwise would, by the surrender, merger or destruction of a preceding estate, interest or right. Thus if property belongs to A. for life, remainder to B. for life, remainder to C., and B. surrenders his life interest to C., C.'s estate is accelerated, because it will probably come into possession sooner than it would if B.'s life interest were in existence.

ACCEPT, (in federal constitution). 4 Gill & J. (Md.) 5; 2 Hill (N. Y.) 582.

ACCEPT A DEED, (A to, in award). Ld. Raym. 611.

ACCEPT BILLS, (power to). 7 Barn. & C. 278; 1 Man. & Ry. 66.

ACCEPTS, (written on bill of exchange). 1 Bouv. Inst. 466.

ACCEPTANCE.—LATIN: *accipere*, from *ad* and *capere*, to take.

§ 1. In its widest sense, acceptance is the act of assenting to an offer; in other words,

the expression of a unity of intention with the person making the offer. (Poll. Cont. 9; Chit. Cont. 11; *see* AGREEMENT.) Ordinarily, acceptance implies the receipt of something offered by another with intent to retain it. Thus, assent by one contracting party to the terms and conditions proposed by the other, is an acceptance, the offer having been *received with intent to retain* the benefits expected from it.

§ 2. **Of bill of exchange.**—In the law of bills of exchange, acceptance is where the drawee of a bill (or in certain cases some other person) writes his signature across the bill, with or without the word "accepted" or other words. (Bills of Exch. Act, 1878, passed in consequence of the decision in *Hindlaugh v. Blakey*, 3 C. P. D. 136. *See* PRESENTATION, § 1.) He thereby engages to pay the bill when due. Byles Bills 184.

§ 3. **The different kinds of acceptance.**—An acceptance may be either *absolute*, [*general*,] *qualified*, or *special*. An absolute or express acceptance is one without qualification or limitation. A qualified acceptance is either *conditional*, where the acceptor inserts in the acceptance words which make his liability to pay dependent on the happening of some event, or the like; or *partial*, or *varying* from the tenor of the bill, as where he accepts for part of the amount of the bill, or for a different date. (Byles Bills 193.) So, also, an acceptance may be *implied* from acts calculated to warrant the inference of an undertaking to pay the bill.

§ 4. **A special acceptance** is one which specifies a particular place for payment of the bill. It may either make the bill payable at a particular place (*e. g.* a banker's,) without more, in which case presentment may be made not only to the banker, but also to the acceptor (whence such an acceptance is said to be a general acceptance as against him); or it may make the bill payable at a particular place, and not elsewhere, in which case presentment can only be made at that place. Byles Bills 194; Stat. 1 and 2 Geo. IV., c. 78.

§ 5. **For honor, or supra protest.**—When a bill has been dishonored by non-acceptance or protested for better security,

any person may accept it for the honor of the drawer or of any of the indorsers, and thereby engage himself to pay the bill at maturity, if it is then presented to the drawee or acceptor and dishonored. Except where there is a "reference in case of need" (*q. v.*), it seems that a bill can only be accepted for honor after it has been protested, and hence such an acceptance is sometimes called an acceptance *supra* protest. (Byles Bills 261.) The acceptor for honor, if he pays the bill, has a right of action against the party for whose honor he accepts, and against all whom that party might have sued. *Sm. Merc. L.* 239.

§ 6. **Promise to accept.**—A promise in writing to accept a bill not yet drawn or presented has been held in many cases to operate as a valid acceptance of the bill when drawn. And in Massachusetts a promise by telegram has been held to have that effect. *109 Mass.* 414.

§ 7. **In marine insurance** the acceptance of an abandonment by the underwriter, is his assent, either express or to be implied from the surrounding circumstances, to the sufficiency and regularity of the abandonment. Its effect is to perfect the insured's right of action as for a total loss, if the cause of loss and circumstances have been truly disclosed. Such acceptance is frequently constructive, as where the underwriter, without authority from the insured or owner, takes possession of the ship in order to repair her; or where, having authority to take such possession, he retains possession for an unreasonable time.

ACCEPTANCE (when means "demand"). *1 Man. & Ry.* 125.

— (of a bill of exchange). *4 Otto (U. S.)* 343; *2 Barn. & Ald.* 113; *7 Barn. & C.* 416; *3 Bingham* 625; *51 Ill.* 106; *Cro. Jac.* 306; *5 East* 521; *2 Green (N. J.)* 341; *3 Kent Com.* 75; *5 Wend. (N. Y.)* 414; *2 Stra.* 1000.

— (of a charter of incorporation). *Ang. & A. Corp.* 46-52; *22 Ind.* 272; *4 Mau. & S.* 255.

— (of a check). *4 Otto (U. S.)* 343.

— (of an office). *1 Cranch (U. S.)* 137; *2 N. H.* 202; *7 Wheel. Am. C. L.* 142.

— (of an official bond). *3 Pick. (Mass.)* 335.

— (of an order, suit brought on). *Penn. (N. J.)* 922.

— (to take sale of goods out of statute of frauds). *3 Barn. & Ald.* 321, 680; *2 Barn. & C.* 37, 511, 513; *3 Id.* 1; *10 Bingham* 99; *1 Car. &*

P. 272; *2 Id.* 532; *3 Dow. & Ry.* 220, 827; *4 Id.* 619; *1 Taunt.* 458.

ACCEPTED, (in mercantile law). *51 Ill.* 106.

— (written on bill of exchange). *1 Bouv. Inst.* 466.

— (written on promissory note). *2 Brod. & B.* 174.

ACCEPTILATION.—The act of the creditor under the civil law, in discharging the obligation of the debtor, without receiving any consideration therefor. Such a transaction was valid unless in fraud of creditors. *Merl. Répert.*

ACCEPTOR.—The party who accepts a bill of exchange, or who engages to pay it in the first instance. The acceptor is generally the drawee, and thereafter becomes the principal debtor, the drawer becoming a surety merely. *1 Hill (N. Y.)* 501.

ACCEPTOR SUPRA PROTEST.—One who accepts a bill after its dishonor and protest, to save the credit of the drawer or indorser. *See ACCEPTANCE*, § 5.

ACCESS.—*LATIN:* *accedo*, to go to.

Approach; the means of approach; opportunity to approach.

§ 1. **In real property law**, the right of access is that possessed by the owner of land adjoining a highway (*e. g.* a road or river) to go from his land on to the highway and *vice versa* without obstruction. It is a different right from the public right of passage or navigation on the highway. (*L. R.* 5 App. Cas. 84.) As to access of light, *see EASEMENT*, §§ 2, 4; *also*, *LIGHT*.

§ 2. **As to legitimacy.**—The term "access" is also used in questions of legitimacy to denote cohabitation or opportunity of sexual intercourse between husband and wife. (*2 Steph. Com.* 285.) The presumption of a child's legitimacy is rebutted, if it be shown that the husband had not access to his wife within such a period of time before the birth, as admits of his having been the father. But if he have access, and others, at the same time, are carrying on a criminal intimacy with his wife, a child born under such circumstances, is legitimate in the eye of the law. *See BASTARD*.

ACCESS, (of husband). *2 Stark. Ev.* 218, *n. (b.)*

— (of husband, in bastardy case). *8 East* 193.

ACCESSARY.—*See* ACCESSORY.

ACCESSION, strictly speaking, is where a thing which belongs to one person becomes the property of someone else, by reason of its becoming added to or incorporated with a thing belonging to the latter. This takes place in the case of alluvion, dereliction, the addition of buildings, plants, &c., to the soil, the erection of fixtures, and where two things are so united as to form one, as by the embroidering of cloth, the painting of a picture on canvas, &c. 2 Just. Inst. 1, §§ 20 *et seq.*; Hunt. Rom. Law 128; 1 Vangerow, Pandekten, 629.

§ 2. Blackstone includes under accession what is more correctly called *specificatio*, which takes place where a person makes a new thing (*species*) out of materials belonging to another, and thereby acquires the ownership of them, subject to making compensation to the former owner for their original value. 2 Bl. Com. 404; Kuntze, Cursus, §§ 508-511.*

§ 3. The word is also used to denote the beginning of the reign of a sovereign, or the acceptance by one nation of a treaty already concluded between two or more other states or sovereignties. *Merl. Répert.*

ACCESSION, (of land, law of). 8 Wheat. (U.S.) 1, 108.

— (by alteration of property in species). 5 Johns. (N.Y.) 348; 7 Cow. (N.Y.) 95.

Accessorium non ducit, sed sequitur suum principale: An accessory thing does not lead, but follows the principal thing to which it is accessory. Thus, in certain cases, a fixture becomes the property of the owner of the land to which it is affixed, and crops are the property of him on whose land they grow.

Accessorium sequitur naturam rei cui accedit: The accessory follows the nature of the thing to which it is accessory. *See* ACCESSION; ACCRETION.

Accessorius sequitur naturam sui principalis: The accessory follows the nature of his principal. An accessory to a crime cannot be deemed guilty of a higher degree of the offence than his principal.

ACCESSORY.—*LATIN: accessorius.*

(1) Anything connected or joined with another thing (called the principal) as an incident or subordinate, is accessory to such principal thing. (2) He who is not a chief actor at a felony, nor present at its perpetration, but yet is in some way concerned therein, either before or after the fact committed, is an accessory to the crime. In this latter sense the word is sometimes spelled *accessary*.

§ 1. **Before the fact.**—An accessory before the fact is he who, directly or indirectly, counsels, procures, aids or commands any person to commit any felony which is committed in his absence, in consequence of such counsel, aid or command. (1 Russ. Cr. 164; Steph. Cr. Dig. 24.) In England the accessory before the fact to any felony is in all respects in the same position as if he were a principal felon. (Stat. 24 and 25 Vict. c. 94 §§ 1, 2; Greaves Cr. Acts, 18.) In high treason and misdemeanor there are no accessories, but all persons concerned therein, if guilty at all, are principals. (1 Russ. Cr. 167, 169.) This is not so well settled in the United States as respects persons who assist traitors. Serg. Const. L. 382; 4 Cranch (U.S.) 472, 501.

§ 2. **After the fact.**—An accessory after the fact is a person who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon, in order to enable him to escape from punishment, or the like. 1 Russ. Cr. 171; Steph. 27; 39 Miss. 702.

§ 3. **At the fact.**—In English law principals in the second degree are sometimes called accessories at the fact. 1 Russ. Cr. 156.

ACCESSORY, (defined). 4 Bl. Com. 35; 2 Stark. Ev. 8.

ACCESSORY AND PRINCIPAL, (defined). Coxe (N.J.) 453. *See also* Baldw. (U.S.) 78, 102; 1 Woodb. & M. (U.S.) 221.

ACCIDENT.—*LATIN: ad to, and cadere to fall.*

An extraordinary, unusual and unexpected event; an event happening from

*The doctrine of property arising from *accession* is grounded on the right of occupancy, and derived from the Roman law; thus, if any given corporeal substance receive an accession, either by natural or artificial means, as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the conversion of wood or metal into utensils, the original owner of the

thing was entitled by his right of possession to the property of it under its improved state; but if the thing itself, by such operation, was changed into a different species, as by making wine, oil, or bread out of another's grapes, olives, or wheat, it belonged to the new operator; who only made a satisfaction to the former proprietor for the materials so converted.

an unknown cause, or without human agency, or without the concurrence of the will of him who causes it.

§ 1. **In Equity practice.**—Where by reason of an accident a party cannot obtain justice at law, chancery will give relief, provided the party asking it has not been guilty of laches, negligence or bad faith. Thus the forfeiture of a bond, where the breach was the result of an accident, may be prevented; recovery on instruments accidentally lost permitted on the plaintiff giving a bond of indemnity, (Snell. Eq. 335) and many other species of relief granted, in cases where a court of law would be unable to interfere. If the remedy at law exists, and is adequate, equity will not give relief.

§ 2. **In England,** a similar jurisdiction was given to the common law courts, so far as relates to negotiable instruments, by stat. 17 and 18 Vict. c. 125, § 87. So, if an annuity was directed by a will to be secured by an investment in public stock, and an investment was accordingly made, sufficient at the time for the purpose, but afterwards the stock was reduced by act of parliament, so that it became insufficient, equity would decree the deficiency to be made up out of the residuary estate. (Snell Eq. 342.) Since the Judicature Acts, of course, relief is given in such cases in all the divisions of the High Court. Jud. Act, 1873, § 24.

§ 3. **Insurance against accident.**—*See* INSURANCE.

ACCIDENT, (defined). 6 Cush. (Mass.) 292; 76 N. C. 322; 24 Wis. 28.

— (escape through). 12 Mass. 321.

— (in bill of lading). 12 How. (U. S.) 272; 2 Rich. (S. C.) 286.

— (rights lost by). 2 C. E. Gr. (N. J.) 353, 354; South. (N. J.) 33, note (a.)

— (in declaration in action for libel). 1 Chit. 489.

— (in insurance policy). 7 Am. Rep. 410; 8 Id. 212; 47 N. Y. 52; 69 Pa. St. 43; 24 Wis. 28.

— (in a statute). 49 N. Y. 420; 49 Ala. 385; 50 Vt. 713; 46 Id. 512.

ACCOMENDA.—A contract whereby a person entrusts property to the master of a vessel, to be sold for their joint profit.

ACCOMMODATION.—FRENCH: *accommodation*.

A friendly agreement, or arrangement made as a favor to another; an amicable composition between persons at variance.

§ 1. **Land.**—In English law, accommodation land is land acquired for the purpose of being added to other land for its improvement; an accommodation road is one constructed to give access to a particular piece of land.

§ 2. **Works.**—Where a railway company takes land compulsory, in England, it is bound, under the 68th section of the Railways Clauses Act, 1845, to construct all gates, bridges, roads, fences, &c., necessary to make good any interruptions caused by the railway passing through the land; these are called accommodation works. Hodge Railw. 361.

ACCOMMODATION, (acceptance of bill for). 8 Pick. (Mass.) 155.

— (endorsement of note for). 7 Mass. 449.

ACCOMMODATION BILL, (drawer to indemnify acceptor against costs). 7 Bing. 217.

ACCOMMODATION NOTE, (what is). 10 Johns. (N. Y.) 198; 12 Wend. (N. Y.) 523; 4 Moo. & P. 839.

— (assignment for payment of). 7 Serg. & R. (Pa.) 462.

— (position of party buying, as to defence of usury). 1 Hill (N. Y.) 9.

— (to firm; transferred by partner for his sole benefit). 23 Wend. (N. Y.) 311.

ACCOMMODATION PAPER, (defined). 71 Me. 273; 55 Pa. St. 73. *See also* BILL OF EXCHANGE; PROMISSORY NOTE.

ACCOMPANY, (said of documents). 106 Mass. 226.

ACCOMPLICE.—LATIN: *ad*, to, and *complico*, to fold together.

One who participates in any manner, other than as principal, in the commission of a crime. 47 Ill. 152. *See* ABET; ACCESSORY; PRINCIPAL.

ACCORD—ACCORD AND SATISFACTION.—An accord is an agreement between two or more persons, one of whom has a right of action against the other (*e. g.* for breach of a contract), that the latter shall render and the former accept something in satisfaction of the right of action, *e. g.* payment of money, delivery of goods, performance of works or services, &c. If the accord is carried out by the payment, delivery or performance, and acceptance, the arrangement is called an "accord and satisfaction" (in the old books sometimes an "accord and execution"), (6 Rep. 43 b), and operates as a bar to the right of action. *See* SATISFACTION.

ACCORD, (defined). Coxe (N. J.) 170.

— (to sustain plea of accord and satisfaction). 75 N. Y. 574, 576.

ACCORD AND SATISFACTION, (defined). 50 Miss. 251, 257.

— (by parol not a bar to action on a record). 4 Den. (N. Y.) 414.

— (fraudulently obtained). 1 Hill (N. Y.) 532.

ACCORDING TO CONTRACT, (in a letter, a sufficient memorandum in writing under statute of frauds). 4 Munf. (Va.) 77

ACCORDING TO THE COURSE OF ADMINISTRATION, (in a will). 3 Ves. 146.

ACCORDING TO THE EVIDENCE, (a verdict). 3 Serg. & R. (Pa). 609.

ACCORDING TO LAW, (in tax law). 10 Wend. (N. Y.) 193.

— (in a will). Sax. (N. J.) 216; 23 Pa. St. 317.

— (in an affidavit). 30 Ala. 183.

ACCORDING TO THE STATUTE IN SUCH CASE MADE AND PROVIDED, (in pleading). 4 Barn. & C. 554; 13 East 3; Ld. Raym. 342; 5 Halst. (N. J.) 142; 1 Mass. 103.

ACCOUNT.—LATIN: *ad*, to, and *computo*, to sum up.

A list or statement of monetary transactions, such as payments, receipts, purchases, sales, debts, credits, &c., in most cases showing a balance or result of comparison between items of an opposite nature, *e. g.* receipts and payments. As to the appropriation of payments in a current account, *see* APPROPRIATION; CLAYTON'S CASE.

§ 1. **Account rendered.**—An account prepared by the creditor and presented to the debtor for acceptance. When accepted it becomes an account stated.

§ 2. **Mutual accounts.**—Statutes of limitation usually contain an exception respecting what are known as "merchants'" or "mutual accounts." That is, where the action is founded upon an account containing mutual credits and charges, the time of limitation is computed from the date of the last entry.

§ 3. **Account stated.**—When two persons, having had monetary transactions together, close the account by agreeing to the balance appearing to be due from one of them, this is called an account stated; it is of importance from the fact that it operates as an admission of liability by the person against whom the balance appears; or, in the language of the common law, "the law implies that he against whom the balance appears has engaged to pay it to the other." (3 Bl. Com. 164; Chit. Cont. 599 *et seq.*) And on this implied promise or admission an action may be brought.

§ 4. **Settled account.**—When a trustee and *cestui que trust* agree to an account, it is called a settled account, and the Court will not, as a general rule, open it—that is, require the whole of it to be investigated—unless there has been some concealment or undue advantage taken by the trustee.

Dan. Ch. Pr. 576, 1136. *See* FALSIFY; SURCHARGE.

§ 5. **Open, or current account.**—If the account is open, that is, if it has not been stated or agreed upon by the parties, either of them may bring an action against the other; if it is a mere question of indebtedness under a contract or a quasi-contract, he may sue under the contract for the balance which he alleges to be due to him. An account is also called "open" when the dealings of the parties are still continuing so that further charges and credits are liable to be made.

§ 6. **Instances.**—The commonest instances of actions for accounts are actions by one partner against another for an account of the partnership dealings; by a principal against his agent. (Hayne's Eq. 243;) by a beneficiary against executors or trustees for an account of what they have received (or ought to have received) and paid in respect of the trust property; and by a mortgagor against a mortgagee who has entered into possession of the mortgaged property, in order to ascertain what he has received or ought to have received in respect of rents and profits, so that the amount may be set off against the amount payable on the mortgage.

§ 7. **Executors' accounts.**—Sometimes, however, the taking of an account is merely incidental to the main object of the action. Thus, in an administration action in England, the executors or trustees have to bring in an account (or periodical accounts from time to time, according to the nature of the trust) of what they have received and paid in respect of the estate.

§ 8. **Account of profits.**—Again, when an action for injuries, (*e. g.* infringement of a patent) is brought, it is frequently necessary to ascertain what profits the defendant has made, or an inquiry what damages the plaintiff has sustained, by the acts complained of, in order that the amount may be paid to the plaintiff as compensation; and this is done by directing an account of the profits (or an inquiry as to the damages) to be taken.

§ 9. **Receiver's accounts.**—So, when a receiver of real estate, or of a partnership, or manufacturing company, or other corporation is appointed, he is generally directed to bring in

his accounts at stated intervals. Committees in lunacy, also, must bring in and pass their accounts periodically. Pope Lun. 182.

§ 10. **Simple account.**—With reference to the manner in which they are taken, accounts are of various kinds. Thus, suppose a mortgagee has entered into possession of the property, and has received rents and profits, but not sufficient to pay the interest on the debt, and an account is directed, the receipts will be put on one side and the amounts due for interest on the other, and the difference or balance will represent what the mortgagor has to pay in respect of interest: this is a simple account.

§ 11. **Income and capital accounts.**—In certain cases, as where trustees have to pay income to a tenant for life, the accounts are of two kinds—income accounts and capital accounts. The former show the receipts, expenses and payments on account of income (*e. g.* receipt of rents, payment of the expenses of collecting them, and payment of income to the tenant for life); the latter show the receipts, expenses and payments on account of capital (*e. g.* purchases and sales of trust property, payments of debts due by the testator, &c.)

§ 12. **Account with rests.**—When an accounting party has received sums which he has or ought to have employed as principal, an account with rests may be directed against him. By taking an account with rests is meant that at yearly, half yearly or other periods in the account the receipts and payments are balanced, and the balance appears in the remainder of the account without reference to the original amounts from which it is made up. The object of making rests varies with the nature of the case.

§ 13. **Rests in mortgagee's account.**—Thus, suppose the mortgagee, under a mortgage for \$10,000 with interest at six per cent. which has always been punctually paid, enters into possession of the estate, and receives out of the rents and profits the clear annual sum of say \$700, being a yearly surplus of \$100 after providing for the interest; then if an account is directed against him at the suit of the mortgagor after he has been in possession four years, instead of the surplus income being added up and deducted from the principal (\$10,000—\$400 = \$9600) as would be the case in a simple account (*supra*, § 10), the account will be taken with yearly rests. (2 Fish. Mort. 957; 2 Spence Eq. 809). That is, he will be treated as if he had applied the surplus income each year in reduction of the principal, the effect of which would have been to make the interest in the second year calculated on \$9900, (\$10,000 less \$100) in the third year on \$9800, and in the fourth year on \$9700, and thus to reduce the amount required for interest and increase the balance applicable in reduction of principal.

§ 14. **Rests in executors' accounts.**—The nature of rests in an account against executors or trustees is quite different. Thus, if an

executor has neglected a direction by the testator to accumulate surplus income (*see* ACCUMULATION), or has employed money belonging to the estate in his own business, or otherwise violated his trust, he will be charged with interest, and an account with yearly or half yearly rests will generally be directed against him; the effect of this is, that at each rest the balance due by the executor is ascertained, and interest is calculated on that balance and added as principal to the balance found at the next rest, and so on. It will thus be seen that an account with rests against an executor or trustee means that he is charged with compound interest on his net receipts, because, in the case of neglect to follow a direction for accumulation, he ought to have received compound interest for the benefit of the estate, and because, in the case of the use of trust funds in his own business, he is presumed to have made profit at the rate of compound interest. Compare the somewhat inconsistent cases of *Vyse v. Foster*, L. R., 8 Ch. 309; 7 H. L. 318; *Att.-Gen. v. Alford*, 4 DeG. M. & G. 843; *Jones v. Foxall*, 15 Beav. at p. 392; *Walker v. Woodward*, 1 Russ. 107.

In the case of rests against a mortgagee, on the contrary, they are directed as a fair mode of appropriating his receipts (*see* APPROPRIATION), and do not result in charging him with compound interest. (As to rests generally, *see* *Heighington v. Grant*, 5 Myl. & C. 258; *Turner v. Burkinshaw*, L. R., 2 Ch. 488; *Raphael v. Boehm*, 11 Ves. 92, where a very strict account with double rests was directed; *Williams v. Powell*, 15 Beav. 461. Mr. Fisher, 2 Mort. 959, *n.* (f), 961, seems to consider that the mode of making rests against executors is also applicable to mortgagees. But we have not been able to find any authority for this proposition, which seems to involve a confusion of two distinct doctrines.)

ACCOUNT, (has no definite legal meaning). 5 Cow. (N. Y.) 593.

— (bill in equity for). Sax. (N. J.) 198.

— (bond to). 10 Pet. (U. S.) 364.

— (demand on). South. (N. J.) 155, 224

— (in a statute). 1 Metc. (Mass.) 216

24 Wis. 594.

— (of A). South. (N. J.) 214.

ACCOUNT AND RISK OF CONSIGNEE, (goods sent on). 4 East 211.

ACCOUNT, BALANCE OF, (in mechanics' lien law). 45 Mo. 573.

ACCOUNT, COPY OF, (demand on). Penn. (N. J.) 102, 362, 550; South. (N. J.) 149, 150, 817.

ACCOUNT CURRENT, (deemed an account stated). 12 Barb. (N. Y.) 487; 7 Cranch (U. S.) 147.

— (distinguished from account stated). 2 Saund. 126 *n.*

— (under statute of limitations). Ang. Lim. 197-205; 5 Cranch (U. S.) 15; 3 Pick. (Mass.) 96.

ACCOUNT OPEN AND RUNNING, (under statute of limitations). 1 Wheel. Am. C. L. 164.

ACCOUNT OF, (bill accepted for). 1 Harr. (N. J.) 448.

— (marine policy effected for). 24 Wend. (N. Y.) 276.

ACCOUNT OF GOVERNMENT, (deed made on). 1 T. R. 674.

ACCOUNT OF BEING SECURITY, (in a covenant). 3 Harr. (N. J.) 383.

ACCOUNT OF LOSS, (to insurance company). 7 Cow. (N. Y.) 645; 11 Johns. 260; 23 Wend. 525.

ACCOUNT OF SUCH DISTRESS, (indemnity against costs on). 4 Car. & P. 84.

ACCOUNT OPEN, CURRENT, (within exception in statute of frauds). 5 Johns. (N. Y.) Ch. 522.

ACCOUNT STATED, (defined). 12 Barb. (N. Y.) 487; 11 N. Y. 170; 18 Id. 285; 54 Id. 480; 81 Id. 268, 270; 6 Me. 308; 20 La. Ann. 116; 22 Pa. St. 454; 4 Daly (N. Y.) 117.

ACCOUNT WITH A, (in a note). 8 Mod. 362.

ACCOUNTS, (all my, bequest of). 51 N. H. 78.
 — (amount of, in state of demand). Penn. (N. J.) 164.

— (form of). Lovel. Wills 42.

— (in statutes of limitation). W. Jones 401; 1 Vent. 89; 1 Lev. 298; 1 Sid. 465.

— (meaning of, to give equity jurisdiction). 2 Rand. (Va.) 449.

— (mutual, under statutes of limitation). 2 Stark. Ev. 898.

— (submission of, to arbitrators). 2 Conn. 431.

— (uniting private with administrator's). South. (N. J.) 686.

— (within meaning of limitation act, and poor debtor act). 6 Me. 307; 28 Me. 310.

ACCOUNTABLE, (I am, in promissory note). 2 Ld. Raym. 1396.

— (I am, in letter). 5 Binn. (Pa.) 195.

— (I am, in sealed writing). 1 Lev. 47.

— (in bill, or note). 1 Bouv. Inst. 458.

— (in a statute). 9 R. I. 539.

ACCOUNTABLE FOR, (what executors are). 1 T. R. 42; 4 Ves. 596; Will. Trust. 146; 2 Mad. Ch. 141, 142.

ACCOUNTABLE RECEIPT.—An acknowledgment of the receipt of money to be accounted for by the person receiving it, as opposed to an acquittance or receipt for money paid in discharge of a debt. 1 Exch. 138.

ACCOUNTABLE RECEIPT, (forgery of). 101 Mass. 32.

ACCOUNTANT.—(1) One skilled in, or who keeps, accounts; an expert book-keeper. (2) One who renders an account of moneys and property in his possession as executor, administrator, guardian or other trustee, either to the person entitled to the benefit of the fund or to the court.

ACCOUNTANT, (in affidavit under bill of sale act). L. R. 10 Ex. 64.

— (in bill of sale). L. R. 8 Ex. 80.

ACCOUNTANT-GENERAL.—An officer of the Court of Chancery who formerly kept the accounts between the suitors of the Court of Chancery and the Bank of England. His office was established by the act 12 Geo. I., c. 32. (Second Report of Legal Dep. Comm. (1874) 51.) And by the act 35 and 36 Vict. c. 44, the duties of his office were transferred to the Paymaster-General. There was also an Accountant-General of the Court of Exchequer, and there is an Accountant of the Court of Bankruptcy, in whose name the accounts of money belonging to bankrupts' estates and paid into court are kept. Second Sched. to 32 and 33 Vict. c. 91.

ACCOUNTING.—The making up and rendition of an account, either voluntarily or by order of a court.

ACCOUNTING, (before the ordinary). Lovel. Wills 61, 63.

— (distinction between action for not, and action for not paying over). 24 Wend. (N. Y.) 203.

— (in a statute). 37 Mich. 473.

ACCREDIT.—LATIN: *accredere*, to assent to.

In international law.—(1) To receive as an envoy in his public character, and give him credit and rank accordingly.—*Burke*. (2) To send with credentials as an envoy.—*Webster*.

ACCRETION.—LATIN: *acrescere*, to grow to; FRENCH: *accruer*, waste lands added to a forest by the trees encroaching on it. Loysel, Inst. Cont. § 248.

The gradual increase of land by additions thereto resulting from natural causes, such as changes in the beds of rivers and streams, the movement of the tide, &c. This addition is called **ALLUVION**, (*q. v.*)*

ACCRETION, (to land bordering on river or sea, by alluvion). 3 Barn. & C. 91; 4 Id. 485; 10 Pet. (U. S.) 717; 1 Chit. Gen. Pr. 200; 2 Bligh (N. S.) 147; Ang. Waterc. 215; 6 Dowl. & Ry. 536; 5 Bing. 163.

ACCROACH.—To attempt the exercise of royal power without authority. 4 Bl. Com. 76.

ACCRUAL-ACCRUE-ACCRUER.—LATIN: *ad*, to, and *cresco*, to grow.

§ 1. **Accrual of right**.—A right is said to accrue when it vests in a person, espec-

* Some authorities include the following as cases of accretion: (1) When property is increased or added to by an act of nature—as in the case of the young of animals, which belong to the owners of the parents, (*see* **ACCESSION**) and in the case of alluvion and dereliction. (2) Where property is increased or added to by the act of the party, but not by a mode of acquisition recognized by law, as in the case of en-

croachment by a tenant. (3) When a fund is increased by additions which arise from the rule *accessorium sequitur principale* this is called accretion, and the additions themselves are called accretions—e. g. the additions to a charitable fund from the increase in the rents of the land of which it originally consisted, the savings of a married woman's separate estate, &c. L. R. 3 Eq. 424; L. R. 10 C. P. 554; Wats. Comp. Eq. 643.

ally when it does so gradually or without his active intervention, *e. g.* by lapse of time, or by the determination of a preceding right. (*Tacitè ei deficientium partes etiam invito adcrecent.* Dig. xxix. 2 fr. 53, § 1). Thus, the statutes of limitation contain provisions for ascertaining when the right to be barred is deemed to have first accrued, *i. e.* vested in the person entitled to exercise it. A debt *owing* is opposed to a debt *accruing*—the former being a debt payable immediately, the latter a debt payable at a future time (*debitum in præsentis solvendum in futuro*). The fact of a right accruing is called its accrual.

§ 2. **Of Property.**—When a fund, share, estate, security or other property is increased by additions which take place *ipso jure* or *ipso facto*, the additions are said to accrue either to the original fund, or to the person entitled to it.

§ 3. **Accruer.**—When property is divisible among several persons so that on a certain event happening one of them is excluded from participation and the others take the whole, the share of that one is said to accrue to the others, and the fact of its doing so is called its accruer.

ACCRUAL, (of cause of action). 82 N. Y. 17.

ACCUE, (in a statute). 31 Wis. 452.

— (in statute of limitations). 49 Ga. 424.

— (when means same as "occur"). 61 How. (N. Y.) Pr. 146.

— (when wages do). 31 Wis. 451.

ACCURED, (defined). 2 Disn. (O.) 15.

— (in statue relative to wills). 2 Disn. (O.) 15.

ACCRUER, (clause of, in deed or will). 3 Atk. 80.

ACCUMULATED INTEREST, (in a trust deed). 3 Stock. (N. J.) 399.

ACCUMULATED SURPLUS, (as applied to an insurance company). 5 Vr. (N. J.) 479, 489; 6 Id. 575.

— (in tax act, referring to private corporations). 13 Vr. (N. J.) 359.

ACCUMULATION.—LATIN: *ad*, to, and *cumulus*, a heap.

The putting by of dividends, rents or other income and converting it into principal by investing it and again capitalizing the income arising from the new principal, and so on. The capital and accrued income thus formed is called the accumulations. The power of a grantor or testator to authorize his executors or trustees to accumulate the income arising from the estate or property conveyed or devised, is

regulated and restricted by statute both in England and in the several States of the Union.

ACCUMULATIONS OF INTEREST, (in a statute). 24 Wend. (N. Y.) 641.

Accusare nemo se debet, nisi coram Deo: No one is bound to accuse himself, unless in the presence of God.

ACCUSATION.—LATIN: *ad*, to, and *causa*, cause or charge.

A formal charge against a person of the commission of a crime or misdemeanor, made before an officer or court of competent jurisdiction to bring the offender to justice.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit: An accuser should not be heard after the expiration of a reasonable time, unless he can satisfactorily account for the delay.

ACCUSED.—The person against whom an accusation is made.

ACCUSE HIMSELF, (witness need not). 4 Serg. & R. (Pa.) 400.

ACCUSED, (defined). 1 Car. & K. 131.

ACCUSER.—The person by whom an accusation is made.

ACCUSTOMED TO NAVIGATE, (synom. with "usually navigating"). 1 Harr. (N. J.) 137.

ACCUSTOMED TO RUN, (spoken of water). 1 Wils. 174.

ACCUSTOMED WAY, (in a deed). 41 Conn. 308.

ACKNOWLEDGMENT.—

§ 1. **In conveyancing.**—The act of one by whom a deed has been executed, in declaring before a competent court or officer that it is his act and deed. The word is sometimes used to denote the certificate of such declaration made by the court or officer. The form and requisites of such acknowledgments, by whom they may be taken, and what instruments are required to be acknowledged in order to entitle them to be recorded, are regulated in the several States and Territories and in the District of Columbia by statutory enactments. Such statutes require that when the acknowledgment is made by a married woman, it must be made upon a private examination separate and apart from her husband, and the certificate of the officer taking her acknowledgment must recite

that she acknowledges that she signed the deed freely, without any fear, threat or compulsion of her husband.

Similar provisions are to be found in the English statutes. 3 and 4 Will. 4, c. 74, §§ 77, 79; Wms. Seisin 111 *et seq.*; Shelf. R. P. Stat. 368 *et seq.*; Judicature (Officers) Act, 1879; Rules of Court, December, 1879.

§ 2. **Acknowledgment of will.**—In England, if a will is not signed in the presence of the witnesses, the testator must acknowledge his signature in their presence. (Wills Act, § 9.) It is not necessary that he should say in express words to the witnesses, "That is my signature;" it is sufficient if it clearly appears that the signature was existent in the will when it was produced to the witnesses, and was seen by them when they did, at the testator's request, subscribe the will. *Keigwin v. Keigwin*, 3 Curt. 607, cited Shelf. R. P. Stat.; Jarm. Wills.

§ 3. **Under statutes of limitations.**—By the various statutes of limitations an acknowledgment of the debt, or right to which the statute would otherwise be a bar, is sufficient to prevent the statute from applying. In England, this acknowledgment must be written and signed. (Stat. 3 and 4 Will. 4, c. 27, §§ 14, 28, 40, 42; Real Property Limitation Act, 1874; 3 and 4 Will. 4, c. 42, § 5; 9 Geo. IV., c. 14, § 1; 19 and 20 Vict., c. 97, § 13). This is also required in many of the States, in others, however, a verbal acknowledgment is sufficient to revive the statute. What is an acknowledgment within these statutes is generally a question of construction to be determined by the court in such case.

ACKNOWLEDGMENT, (of a deed). 1 Cranch (U.S.) 248; 2 Conn. 527; 39 Ill. 91; 15 Wend. (N.Y.) 546; 1 Watts (Pa.) 328.

—(what sufficient under statutes of limitation). 3 Bing. N. C. 833; Chit. Cont. 754; 5 Scott 213; Shelf. R. P. Stat. 277; 1 Pet. (U.S.) 351; Coxe (N.J.) 159, 176, 433; South. (N.J.) 155; 4 Johns. (N.Y.) 461; 10 *Id.* 35; 17 *Id.* 330; 5 Wend. (N.Y.) 257; 15 *Id.* 284, 302, 308.

—(what insufficient, &c.) 11 Johns. (N.Y.) 146; 3 Wend. (N.Y.) 189, 272, 535; 7 *Id.* 268, 445.

ACKNOWLEDGMENT MONEY, in old English law, was a sum of money paid by copyhold tenants on the death of their landlord to his successor in interest, as a recognition of his title as superior lord.

ACQUEST.—Property newly obtained; obtained by purchase or gift.

ACQUETS.—Same as *acquest*; also, profits or gains of property as between husband and wife.

ACQUIESCENCE.—LATIN: *acquiesco*, to rest.

Acquiescence is where a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that under the circumstances of the case the other party may fairly infer that he has waived or abandoned his right. Thus, if A. is induced by fraud to enter into a contract, and, having discovered the fact, neglects to take proceedings to have it set aside for a great number of years, he is said to have acquiesced in, and thus affirmed, the contract. Full knowledge of the facts is essential, and this constitutes the distinction between bar by acquiescence and bar by limitation, or mere lapse of time. Stat. 3 and 4 Will. 4, c. 27, § 27; Shelf. R. P. Stat. 210; Poll. Cont. 495; 8 DeG. M. & G. 133; L. R., 3 H. L. 256. See **ESTOPPEL**; **LACHES**; **LIMITATION**.

ACQUIESCENCE, (of husband, not binding on wife, when). 17 Wend. (N.Y.) 44.

ACQUIETANDIS PLEGIIS.—A common law writ, formerly lying for a surety where the creditor refused to acquit him after the debt was paid.

ACQUISITION.—LATIN: *acquisitio*.

The act by which property in a thing is procured; also, the thing itself. Acquisition is of two kinds. (1) *Original*, where the property in the thing in question is not, at the time of its acquisition, and in its then existing condition, in any other person. Patented inventions and copyrighted works are instances of this sort. (2) *Derivative*, where the acquisition is of the property of others, procured either by agreement of the parties, *e. g.* gift or sale, or by act of law, as in cases of forfeiture, insolvency, intestacy, judgment, marriage and succession.

ACQUIT—ACQUITTAL.—

§ 1. Acquit "signifieth in law to discharge or keepe in quiet," (Co. Litt. 100 a) and is used in the old books in the sense of a release or discharge generally; but it is now chiefly applied to the case of an accused person who is acquitted or discharged of a charge of crime by judgment, so that he can never again be tried on the same charge (see **AUTREFOIS ACQUIT**), as

where the jury bring in a verdict of not guilty. *Ibid.*; Archb. Crim. Ev. 184.

§ 2. In the old books the term is also used in a special sense to denote an obligation by a lord to his tenant. In some cases, where land was held of a mesne lord, he was bound to protect his tenant from any claims by lords paramount arising out of the services due to them by the mesne lord; this was called acquittal. Co. Litt. 100 a.

ACQUIT, (when means by verdict). 10 Mod. 215.

ACQUITTANCE, in the old books, is a receipt given in acknowledgment of the payment of money, (Noy, Maxims, 95) especially an acquittance or receipt under seal. Co. Litt. 373 a; 5 Rep. 43 a. See ACCOUNTABLE RECEIPT.

ACQUITTANCE, (under forgery statute). 15 Mass. 516; 2 Moo. C. C. 215; L. R., 1 C. C. R. 217.

ACQUITTED, (defined). 26 Wend. (N. Y.) 383, 399.

— (as used in declaration in action for malicious prosecution). 2 Yeates (Pa.) 475; 2 Campb. 113; 2 Nott & M. (S. C.) 143; Willes 517; 2 T. R. 231; 2 Wheel. Am. C. L. 583.

ACRE.—A piece of land containing 160 square rods. This is the English and American acre; that of Scotland is considerably larger.

ACRES, (in a deed). 4 Watts (Pa.) 404.

ACRES OF BARLEY, (trover for). 1 Alc. & N. 22.

ACRES OF LAND, (in tax valuation). 14 Vr. (N. J.) 124.

— (sold by, and falling short). 2 Bibb. (Ky.) 270; 1 Bland (Md.) 109; 5 Mass. 355; 2 Pa. 218, 533, 536; 6 Binn. (Pa.) 102, 113; 13 Serg. & R. (Pa.) 136, 140, 160, 162; 14 *Id.* 293, 296; 2 Watts (Pa.) 320; Gilm. (Va.) 159; 6 Munf. (Va.) 188; 8 Wheel. Am. C. L. 236; Cro. Jac. 390, 472.

ACROSS, (in a statute). 1 Barn. & Ad. 448.

— (right of way). 5 Pick. (Mass.) 163.

— (land, right of way reserved in deed). 10 Me. 391.

ACT.—LATIN: *agere*, to do.

Act generally means something voluntarily done by a person; thus, where a person executes a deed he declares that he delivers it as his "act and deed," the two words being synonymous. An "act in the law" is an operation or effect produced by the law independently of the acts or wishes of the parties; thus, a descent is

an act in the law. (Co. Litt. 149 a.) In the Civil Law, a writing which states in a legal form that a thing has been done, said or agreed, is termed an "act." (Merlin Report). Such an act is "private" when made by private individuals, and "public" when made by public authority, before a public officer, under the public seal, and made public by a magistrate; or extracted and duly authenticated from public records.

ACT, (implies intention). 6 Biss. (U. S.) 238.

— (judicial, defined). 54 Cal. 375, 404;

8 Johns. (N. Y.) 69, 70; 5 Paige (N. Y.) 532.

— (legislative, defined). 54 Cal. 375.

— (ministerial, defined). 54 Cal. 375.

— (of congress, in conclusion of indictment). 2 Mas. (U. S.) 143.

— (of legislative body). 3 Park. (N. Y.) Cr. 243; 13 How. (N. Y.) Pr. 76, 77.

— (public, what shall be). 5 Com. Dig. 322.

ACT AND OPERATION OF LAW, (in a statute of frauds). 2 Cal. (N. Y.) 64.

— (trusts arising by). 5 Johns. (N. Y.) Ch 1; 2 Serg. & R. (Pa.) 521; 14 *Id.* 193; 1 Watts (Pa.) 193.

ACT IN PAIS.—A thing done out of court, and which is not a matter of record.

ACT OF BANKRUPTCY.—

§ 1. Generally.—It is one of the principal objects of the bankrupt law, when a person becomes insolvent, to seize his remaining property and distribute it among his creditors, instead of allowing him to squander it, or to appropriate it in paying particular creditors to the prejudice of others. It is therefore of great importance that an insolvent debtor should be brought under the operation of the law as soon as possible after his affairs become embarrassed, and for this reason certain acts have been prescribed as *indicia* of insolvency. These acts are called acts of bankruptcy. (Robs. Bankr. 102). Acts of bankruptcy may be divided into three classes:

§ 2. Relating to the person.—Those which relate to the person of the debtor, and are evidence of an intention to deprive his creditors of their remedy against his person—as when he goes or remains abroad, or otherwise conceals or absents himself with the intention or the effect of delaying or defeating his creditors.

§ 3. Relating to property.—Those which relate to dispositions of the debtor's

property, and are evidence of an intention to deprive his creditors of their remedy against his estate; these are of two kinds: (1) Dispositions of the whole or part of the debtor's property (not being *bonâ fide* assignments for value), by which the property is removed from the reach of his creditors, and the debtor is rendered insolvent. (2) Acts of fraudulent preference, that is, acts done with a view of giving one creditor a preference over the others (such as conveyances, mortgages, payments, contracts, judgments, &c., voluntarily entered into or suffered in contemplation of bankruptcy), provided the debtor becomes bankrupt within a certain time after the fraudulent act.

§ 4. **Relating to circumstances.**—Those which relate to the state of the debtor's circumstances and are evidence of his insolvency, but not necessarily of an intention to defeat or delay his creditors, such as a declaration by the debtor of inability to pay his debts, an execution levied against him, &c.

§ 5. **Traders and non-traders.**—Acts of bankruptcy may also be divided, with reference to the status of the person committing them, into—those confined to traders and those applying to all debtors, whether traders or non-traders. Eng. Bankr. Act, 1869, § 6.

§ 6. An act of bankruptcy forms the foundation of an involuntary petition for adjudication. What were acts of bankruptcy under the recent United States bankrupt law, *see* 18 U. S. Stat. at L. 178. *See* BANKRUPTCY.

ACT OF CONGRESS, OF THE LEGISLATURE, OR OF PARLIAMENT.—An enactment of the legislative branch of government; a formal declaration of provisions having the force of law. (Co. Litt. 126 a; 1 Bl. Com. 85.) Sometimes an act begins with a preamble stating its occasion or purpose. H. Cox. Instit. 19.

§ 1. **Public acts.**—Acts are either public or private. Public acts (also called statutes, or general statutes, or statutes at large) are those which relate to the community generally, or to sections of the community; all public acts are judicially noticed by the judges. *See* NOTICE.

§ 2. **Private, personal and local acts.**—Private acts (formerly called special, Co. Litt. 126 a) are those which relate either to particular persons (personal acts) or to particular places (local acts). Personal acts chiefly relate to the naturalization, names, estates or divorces of particular persons; local acts relate principally to railways, bridges, docks, boroughs, cities, towns and villages.

ACT OF GOD.—

§ 1. **In general.**—An act of God is an event which could not happen by the intervention of man; such as a death, storm, earthquake, extraordinary flood, &c. (1 T. R. 27; 11 Exch. 618.) At the present day, the phrase is chiefly used in the following branches of law:

§ 2. **Insurance.**—In the law of insurance, an insurer is not liable to indemnify the assured against loss occasioned by an act of God; and a common carrier, being an insurer, is similarly privileged. Maud. & P. Mer. Sh. 259; 1 C. P. D. 435.

§ 3. **Contract.**—In the law of contracts, where the performance of a contract becomes impossible through an act of God, the promisor is in many cases discharged from liability; thus, if a lessee of land covenants to leave a wood in as good a plight at the end of the lease as it was at the beginning, and afterwards the trees are blown down by a tempest, he is discharged of his covenant. (1 Rep. 98 a; L. R. 4 Q. B. 185). Whether an event is an act of God for the purposes of a particular contract depends on the nature of the contract and the event, especially on the question whether it can be foreseen and provided against for the purposes of the contract. *See* Poll. Cont. 335.

§ 4. **Torts.**—In the law of torts, a person is frequently discharged from the consequences of an event which has taken place indirectly through his agency, if it has been directly caused by an act of God. Thus, where a person made a reservoir by damming up a stream, and an extraordinary rainfall caused the water to burst the embankment and flood the adjoining land, the owner of which brought an action for damages against the owner of the reservoir, it was held that the action was not maintainable, because the injury was

caused by the act of God. L. R., 10 Ex. 255; 2 Ex. D. 1. Compare L. R., 3 H. L. 330; Underh. Torts, 13; 9 Ch. D. 503.

ACT OF GOD, (defined). 1 Conn. 487; 69 Ill. 285; 76 Ill. 542; 4 Zab. (N. J.) 700; 8 Wend. (N. Y.) 473.

— (what is not). 1 Moo. & P. 561.

— (in law of carriers). 4 Bing. 607; 1 T. R. 33; 3 Esp. 131; 2 Ld. Raym. 909, 917; 4 Campb. 203; 1 Wils. 281; 6 Johns. (N. Y.) 160; 10 Id. 11; 1 Cai. (N. Y.) 43; 7 Cow. (N. Y.) 499; 14 Wend. (N. Y.) 218; 21 Id. 190; 23 Id. 310; 31 Barb. (N. Y.) 45; 10 Id. 612; 44 Id. 54; 10 N. Y. 431; 29 Id. 115; 30 Id. 564; 71 Id. 180, 187; 1 Sweeny (N. Y.) 89; 6 Abb. (N. Y.) Pr. N. S. 128; 1 Hilt. (N. Y.) 235; 37 How. (N. Y.) Pr. 29; 30 Ala. 120; 69 Ill. 285; 76 Ill. 542; 5 Blackf. (Ind.) 222; R. M. Charlt. (Ga.) 19; 2 Watts (Pa.) 116; 2 Spears (S. C.) 197.

— (when tempest is). 1 Stra. 128.

— (to render performance of condition impossible). 6 Halst. (N. J.) 257.

— (to excuse non-performance of covenant). 1 Cranch. (U. S.) 345.

ACT OF GRACE.—An act passed in Scotland in 1696, providing for the maintenance of debtors imprisoned by their creditors. In England, the phrase is usually applied to insolvent acts, and to general pardons or amnesties granted at the beginning of a new reign, or on other great occasions.

ACT OF HONOR.—An instrument prepared by the notary after a bill has been protested, at the request of a third party who desires to accept or pay the bill for the honor of one or all of the parties thereto.

ACT OF INDEMNITY.—A statute by which those who have committed illegal acts which subject them to penalties, are protected from the consequences of such acts.

ACT OF LAW.—The operation of legal principles upon ascertained facts.

ACT OF SETTLEMENT.—The 12 and 13 Wm. III. c. 2, limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body being Protestants.

ACT OF STATE.—An act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An act of state cannot be questioned or made the subject of legal proceedings in a court of law. Thus, where a foreign sovereign contracted certain debts, and his territory was afterwards annexed by the British government, it was held that the annexation having been an act of state, the creditors could not make any claim in respect of the revenue of the annexed territory. L. R. 19 Eq. 509; 1 Smith Lead. Cas. 658; L. R. 6 Q. B. 1; 5 App. Cas. 102.

ACT ON PETITION.—A convenient and summary mode of proceeding in divorce, probate and ecclesiastical matters in England, often resorted to for the adjudication of questions

which are too important to be brought before the court on motion merely, and yet not so important as to necessitate the pleadings and other steps involved in a regular action or suit. Thus, in divorce suits, the question whether the court has jurisdiction in the matter is generally determined by an act on petition. (Browne Div. 238; Divorce Rules (1866), 56 *et seq.*; Phillim. Ecc. L. 1259.) In probate matters, questions of propriety of conduct, personal qualifications, jurisdiction, &c., are generally brought before the court by act on petition. (Browne Prob. Pr. 294; Prob. Rules (1862), C. B. 64 *et seq.*) The proceedings commence with the petition, setting forth the facts relied on, and the relief prayed, to which the defendant files his answer. (In ecclesiastical practice this is called "writing to the act." Phillim. Ecc. L. 1259.) And the plaintiff, if necessary, replies, and so on until the parties are at issue, when the petition is set down for hearing as a cause.

ACT OR INTENTION, (in policy of life insurance). 6 Biss. (U. S.) 238.

ACT TO BE PASSED, (in statute, included act passed). Wilberf. Stat. L. 156. See also 14 East 510.

Acta exteriora indicant interiora secreta: External acts indicate undisclosed thoughts.

ACTA OMNIA RITE, &c., (defined, and applied). 2 Ld. Raym. 1233; 10 Pet. (U. S.) 472; 13 Serg. & R. (Pa.) 384; 14 Id. 175.

ACTED WITH, (the estate to be, in a will). 6 Watts (Pa.) 89.

ACTING AS BANKER, (who is one). 1 Atk. 218; 2 Bos. & P. 383.

ACTING TRUSTEE, (defined). Will. Trust. 121.

ACTIO.—In civil law, means both the proceeding to enforce a right in a court, and the right itself which is sought to be enforced. The principal phrases in which the word is used, either in the civil or common law, are—

Actio ad exhibendum: An action instituted for the purpose of compelling a defendant to exhibit a thing or title in his power.

Actio æstimatoria—Actio quanti minoris: Actions brought by a buyer for the purpose of reducing the contract price.

Actio arbitraria: An action which depended on the judge's discretion, and in which the defendant was liable to be condemned unless he would make such amends to the plaintiff as the judge dictated.

Actio bonæ fidei: An action which the judge decided according to equity, the *judex* thus acting as *arbiter* with a wide discretion.

Actio calumniæ: This action lay to prevent the defendant from prosecuting a false claim against the plaintiff.

Actio civilis—Actio directa: Actions proceeding directly in accordance with the written law.

Actio commodati contraria: An action by a borrower against a lender, to enforce the execution of a contract.

Actio commodati directa: An action by a lender against his debtor to recover back the subject of the loan.

Actio communi dividundo: An action to procure a division of property held in common.

Actio contra defunctum cæpta continuatur in hæredes: An action begun against a person who dies is continued against his heirs.

Actio damni injuria: An action brought for losses occasioned by wrongful acts.

Actio de dolo—Actio de dolo malo: Actions brought in cases of fraud.

Actio de pecunia constituta: An action against one who has promised to pay money, either for himself or another, where there is no stipulation.

Actio depositi contraria: An action which a depositary has against a depositor, to compel him to fulfil his engagement towards him.

Actio depositi directa: An action which is brought by a depositor against a depositary, in order to get back the thing deposited.

Actio emptio: An action brought by a buyer for the purpose of compelling the performance of the seller's obligations, or to recover compensation.

Actio ex contractu: Action arising out of contract.

Actio ex delicto: Action arising out of tort.

Actio ex stipulatu: An action brought to enforce a stipulation.

Actio furti: A phrase used to denote the various civil actions for theft.

Actio familiæ erciscundæ: An action to obtain the division of an inheritance.

Actio in factum: An action adapted to the particular matter in controversy, as distinguished from *actio in jus*, which was an action founded on some existing law.

Actio in personam: An action, the effect of which is upon the defendant personally.

Actio in rem: An action, the effect of which is upon certain property.

Actio injuriam: This phrase denoted the class of actions for injuries to the person, either of the plaintiff, or of those in whose security he had an interest.

Actio iudicati: An action to enforce a judgment, by the sale of the debtor's property.

Actio mandati: An action founded upon a contract of mandate.

Actio negotiorum gestorum: A phrase denoting the actions between parties to a contract of agency.

Actio non: The statement in a special plea that "the said defendant ought not to have or maintain his aforesaid action," &c., against the defendant.

Actio non accrevit infra sex annos: The name of the plea of the statute of limitations.

Actio non datur non damnificato: An action is not given to him who is not injured.

Actio personalis: A personal action. An action *in personam*.

Actio personalis moritur cum persona: "A personal action dies with a person"—a maxim meaning that rights of action arising

out of torts, are destroyed by the death of either the injured or the injuring person. This was the universal rule at common law, and is still the rule in many cases. Thus, an action for slander, battery, or the like, cannot be brought after the death of either party. But an action may be maintained by the executors or administrators of a deceased person, in respect of an injury committed to his real or personal property during his lifetime, and, conversely, an action lies against the executors or administrators of a deceased person for any wrong committed by him in respect of his real or personal property—provided that in each case the action is brought within a certain time. Further, a remedy is given to the near relatives of a person who has been killed by the wrongful act, neglect, or default of another. The result, therefore, generally is that (1) in the event of the death of the injured person, the maxim only applies in cases of torts to the reputation and torts to the person not resulting in death, and that in all other cases the right of action survives to the representatives of the injured person; (2) in the event of the death of the tortfeasor, the maxim applies in all cases of injury to the person or reputation, so that the right of action only survives against the representatives of a tortfeasor in cases of injury to property. See ABATEMENT; PERSONAL.

Actio pœnalis in hæredem non datur, nisi forte ex damno locupletior hæres factus sit: A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.

Actio pro socio: An action by which either partner could compel his co-partners to perform their social contract.

Actio quælibet it sua via: Every action proceeds in its own way.

Actio redhibitoria: An action to compel the seller to take back the thing sold, and to restore the price paid, with interest.

Actio stricti juris: An action in which the decision was regulated by the strict terms of the contract.

Actio tutelæ: An action based upon obligations growing out of such a relation as that of guardian and ward.

Actio venditi: An action brought by a seller to compel the performance on the part of the buyer of a contract of sale.

ACTION.—NORMAN-FRENCH: *accion*, from Latin, *actio*. Britt. 128 a.

§ 1. An action is a civil proceeding taken in a court of law to enforce a right. (See CAUSE OF ACTION.) This is the technical legal meaning; the vernacular signification—anything done or performed—is also frequent in jurisprudence.

§ 2. In practice, an action is a proceeding commenced by a writ or summons, as opposed to "special proceedings" and "applications" in which the court and not the plaintiff, appears to be the actor, and which are commenced by motion, petition,

or some similar mode—and the ordinary steps in it are as follows:—The first thing is to bring the parties before the court. For this purpose the writ or summons is prepared, issued and served by the plaintiff on the defendant, and the defendant appears. The next thing is to ascertain what is the question or dispute between the parties: this is done (unless the parties agree to state a special case) by the pleadings: the plaintiff prepares and files, or serves his declaration or complaint, the defendant his answer, demurrer, or plea, and if necessary his counter-claim or notice to third parties, as the case may be; the plaintiff files or serves his reply or demurrer, and so on. This is called the joining of issue.

§ 3. As soon as the parties are at issue, the next thing is to ascertain which of them is in the right; if the question is one of law raised by demurrer, it is argued before the court, and judgment given for the party in the right; if it is a question of fact, it has to be tried or referred, and when the facts of the case have been ascertained from the evidence adduced on the trial or reference (*see* VERDICT; REPORT), the judgment of the court is obtained, deciding what are the rights and liabilities of the parties on the facts as found; the costs are taxed, and the judgment is enforced if necessary by execution. According to the old writers, an action comes to an end when judgment is given. Litt. § 504; Co. Litt. 289 a.

§ 4. In addition to these usual steps, almost every action involves a number of miscellaneous proceedings, such as motions, injunctions, discovery and inspection, accounts and inquiries, commissions, new trials, appeals, &c.; while many actions come to an end before trial by discontinuance or dismissal, or by the default of one of the parties, resulting in a judgment for the other.

§ 5. **Test action.**—Where a number of actions are brought by different plaintiffs whose claims arise out of the same facts (as where several shareholders in a company bring separate actions against the promoters for misrepresentation, &c.), the court generally allows one of them to be selected as a test action, on the condition

that, if the plaintiff in that action fails, the other plaintiffs shall abandon their claims. W. N. (1878) 75. *See* CONSOLIDATION.

§ 6. **Civil and criminal.**—An action is “civil” when it lies to enforce a private right or redress a private wrong; it is “criminal” when instituted on behalf of the sovereign or commonwealth in order to vindicate the law by the punishment of a public offence; but in this latter sense, prosecution is the more appropriate term.

§ 7. **Common law and statutory,** as applied to actions, mean respectively those which may be brought at common law, and those which are based upon statutes creating them.

§ 8. **On contract, or in tort.**—Actions are on contract or in tort according as the cause of action is founded on a contract, or arises out of a tort.

§ 9. **Popular actions—Qui tam actions.**—Popular actions are such as may be brought by any person, as in the case of a penal statute, which forbids some act or omission on pain of forfeiting a penalty to any such person as will sue for it. Sometimes part of the penalty is given to the crown or the public, and the rest to the informer, and then the suit is called a qui tam action, because it is brought by a person “*qui tam pro domino rege, &c., quam pro se ipso in hac parte sequitur.*” 3 Bl. Com. 161. *See* INFORMER.

§ 10. **Chancery actions.**—Actions in Chancery are equally various; the principal kinds are injunction suits, actions to remove clouds upon title, actions for specific performance, partnership actions, actions for accounts, redemption, foreclosure, execution of trusts, administration actions, &c. Suit (*q. v.*) is the more common word to distinguish an equitable action from one at law.

§ 11. **Probate actions.**—In England, probate actions, or actions relating to wills and letters of administration, include the action for propounding a will in solemn form; the interest action, where the plaintiff claims the grant of letters of administration as one of the next-of-kin of a deceased person; and the revocation action, for revoking a probate or letters of administration. Smith Act. 32.

§ 12. **Admiralty actions: in rem.**—An admiralty action may be either *in rem* or *in personam*. By proceedings *in rem*,

the property in relation to which the claim has arisen, or the proceeds of the property when in court, can be proceeded against and made available to answer the claim. (Wms. & Br. Adm. 186.) Thus, a claim for damage caused by collision, or for salvage or necessities, is generally enforced by an action *in rem*. *Id.* 64, 187.

§ 13. **Admiralty actions: in personam.**—An action *in personam* is an action against a particular person or persons, as in an ordinary action in a court of law. Of course, if the ship or other property in relation to which a claim arises is out of the jurisdiction, the action must be *in personam*.

§ 14. In English law, before the Judicature Acts, (and in those of the States where the common law practice prevails,) "action," or "action at law," generally means a proceeding in one of the common law courts as opposed to a suit in equity. In early times actions were divided into criminal and civil, criminal actions being appeals and other proceedings in the name of the crown. (Co. Litt. 284 b., 287 b.) In modern times, however, "action" always meant a civil action.

§ 15. **Real, personal, mixed.**—In this sense, actions are divided into real, personal and mixed, real actions being those brought for the specific recovery of lands or other realty; personal actions, those for the recovery of a debt, personal chattel or damages; and mixed actions, those for the recovery of real property, together with damages for a wrong connected with it. Litt. § 494; 3 Bl. Com. 117. As to real actions, see Wms. Seis. 156; Rosc. Real Act.

§ 16. **Local and transitory.**—Actions are also divided into local and transitory, according as they are founded on such causes of action as necessarily refer to some particular locality (as in the case of trespasses to land) or not. 3 Bl. Com. 294.

§ 17. **"Feint" and "false."**—Another now obsolete distinction is between a feint, feint or feigned action—that is, one in which the words of the writ were true, yet, for certain causes not appearing on the writ, the plaintiff had no right to recover what he claimed—and a false action, or one in which the words were false or untrue. If a person recovered land against a tenant in tail by a feint or false action, after the death of the tenant in tail his issue could recover the land back again. Litt. §§ 688, 689.

§ 18. **Various other actions.**—The following are the names of various particular actions now mostly obsolete—

Action of a writ: A phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ sued upon, although it may be that he is entitled to another writ or action for the same matter.

Action of abstracted multures: An action for multures or tolls against those who are thirled to a mill, *i. e.* bound to grind their corn at a certain mill and fail to do so.

Action of adherence: An action competent to a husband or wife to compel either party to adhere in case of desertion.

Actions ordinary: All actions not rescissory. See *infra*.

Ancestral action: One brought for the recovery of land, in which the plaintiff relies on the seizin or possession of his ancestor.

Droitural action: One founded on the right, to determine the title to land, as distinguished from a *possessory* action.

Formed action: One for which a set form of words is prescribed.

Petitory action: Same as *Droitural*, *supra*.

Possessory action: One instituted to recover the possession, without of necessity determining the right. This action, and the preceding one (Petitory) are in common use in Louisiana, owing to the adoption of the civil law practice there.

Rescissory action: One brought for the purpose of avoiding a deed or other writing.

ACTION, (defined). 3 Bl. Com. 117; Co. Lit. 285, 285 a; 41 Ga. 223; 23 Me. 420, 425; 71 Me. 404; 11 Abb. (N. Y.) Pr. 245; 1 Barb. (N. Y.) 11; 2 Edw. (N. Y.) 572; 3 How. Pr. 56; 10 Id. 1, 9; 19 Id. 419; 20 Id. 380; 72 Pa. St. 480.

— (what proceedings are included). 27 Barb. (N. Y.) 452; 1 Code R. (N. Y.) 70; 3 Id. 246; 41 Conn. 329; 3 How. (N. Y.) Pr. 318; 4 Id. 83; 10 Id. 1; 13 Id. 398; 2 Sandf. (N. Y.) 231; 71 Pa. St. 170; 11 Mich. 139; 3 So. Cal. 417.

— (what are not included). 2 Abb. (N. Y.) Pr. 432; 1 Barb. (N. Y.) 11; 2 Hill (N. Y.) 412; 2 How. (N. Y.) Pr. 35; 3 Id. 56; 63 Me. 27; 20 Pick. (Mass.) 201; 2 Thomp. & C. (N. Y.) 431; 3 Code R. (N. Y.) 148; 1 Duer (N. Y.) 701.

— (writ of error is). 71 Pa. St. 170.

— (writ of error is not). 1 Barb. (N. Y.)

12.

— (distinguished from "cause of action").

41 Ga. 224.

— (distinguished from "suit"). 1 Barn. & Ad. 200; 10 Paige (N. Y.) 515; 6 Ohio 499.

— (civil and criminal distinguished). 9 Iowa 114.

— (as used in a statute). Willes 672; 1 Harr. (N. J.) 243; 63 Me. 27; 5 Mass. 141; 4 Q. B. D. 459.

— (in statute of limitations). 9 Pick. (Mass.) 242.

— (in statute concerning witnesses). 29 Ohio St. 86.

— (in common law procedure act). L. R. 2 H. L. 391.

ACTION AT LAW, (when indictment is). 6 Oreg. 133.

ACTION FOUNDED ON CONTRACT OR TORT, (in a statute). 3 Q. B. D. 23; L. R., 8 C. P. 345.

ACTION IN REM, (foreclosure suit is). 5 Neb. 460.

ACTION TO RECOVER A CHATTEL, (what is not). 23 Hun. (N. Y.) 356, 361.

ACTION FOR THE RECOVERY OF REAL PROPERTY, (in a statute). 25 Minn. 183.

ACTION, ANOTHER PENDING, (plea of). 5 Halst. (N. J.) 276; 1 Cow. (N. Y.) 116.

ACTIONS, (covenant to save harmless from). Shep. Touch. 389; 8 East 593; 6 Wend. (N. Y.) 404.

— (release of). 1 Carth. 120; Co. Lit. 291, 292; 1 Cro. 14; Dy. 56, 307; Holt 620; Ld. Raym. 235; 3 Lev. 274; 6 Mod. 35; 12 Id. 291; Shep. Touch. 338, 340, 341; 1 Show. 153; 1 Serg. & R. (Pa.) 410.

ACTIONS, ALL NOW DEPENDING, (release of). Ld. Raym. 964.

ACTIONS, CLAIMS AND DEMANDS, (release of). 1 Cow. (N. Y.) 122.

ACTIONS, SUITS AND DEMANDS, (release of). 2 Bulstr. 231, 286; 5 Co. 56, 70; Co. Lit. 290; Cro. Eliz. 580; Cro. Jac. 170, 300, 486, 623.

ACTIONS, SUITS, QUARRELS AND TRESPASSES, (release of). Dy. 217 b.

ACTIONS, (submission of). 15 East 213; 1 Stark. Ev. 200.

ACTIONS BETWEEN A. AND B., (submission of). 11 East 189.

ACTIONS, PERSONAL SUITS AND QUARRELS, (in submission). Ld. Raym. 115.

ACTIONS BRING, (power to trustees to). Will. Trust. 151.

ACTIONABLE.—That for which an action will lie: thus, when slanderous words are spoken, they are called "actionable *per se*" when an action for slander may be brought upon them without alleging special damage.

ACTIONARY.—A foreign commercial term for the proprietor of an action or share of a public company's stock, a stockholder.

ACTIONES NOMINATÆ.—Named actions. Writs for which there were precedents prior to 13 Edw. I. c. 34.

ACTON BURNELL.—The statute 11 Edw. I. (1233) for the collection of debts. It takes its name from the fact that the parliament which enacted it, sat at the time at the village of Acton Burnell.

ACTOR, is used to denote the person who has the active claim in a judicial proceeding, as distinguished from *reus*, the defendant, *e. g.* a plaintiff, or a claimant, or a demandant under the old practice. So, in an action of replevin, although the person who actively claims the distress (the distrainer) is in point of form the defendant, he is regarded as actor equally with the plaintiff, who is in possession of the goods distrained, and merely resists the defendant's claim for their return. Co. Litt. 127b. The term actor is borrowed from the Roman law. Just. Inst. IV. 6, § 2.

Actor qui contra regulam quid adduxit, non est audiendus: A plaintiff is not to be heard who has advanced anything against authority.

Actor sequitur forum rei: A plaintiff follows the court of the defendant.

Actore non probante reus absolvitur: When the plaintiff does not prove his case the defendant is acquitted.

Actori incumbit onus probandi: The burthen of proof lies on a plaintiff.

ACTS, (in power of attorney). 7 Barn. & C. 278.

— (covenant against lessor's). 1 Barn. & C. 457.

— (legislative and judicial, distinguished). 18 Am. Dec. 236, *n.*

ACTS OF COURT.—Memoranda in the nature of pleas, made in the English Admiralty Courts. Tenders must be made by acts of court. Abb. Sh. 403; Dunl. Adm. Pr. 104, 105; 4 C. Rob. Adm. 103; 1 Hagg. Adm. 157.—*Bouvier*.

ACTS OF SEDERUNT.—Ordinances made by the judges of the Scotch Court of Session, by virtue of an act of the Scotch Parliament, passed in 1540, for regulating the forms of proceeding in that court.

ACTUAL.—Existing in act, and at the present time, as opposed to that which is merely theoretical or possible.

ACTUAL, (defined). 31 Conn. 213.

ACTUAL CASH PAYMENT, (in a statute). 103 Mass. 17; 34 Pa. St. 344.

ACTUAL CHANGE OF POSSESSION, (in chattel mortgage act). 2 Hill (N. Y.) 628.

ACTUAL COST.—The purchase price; that which has been actually paid, without regard to the market value of the thing purchased.

ACTUAL COST, (in a statute). 2 Mas. (U. S.) 48, 393.

— (of running trains, in a railroad lease). 9 Gray (Mass.) 226.

— (in revenue laws). 2 Mas. (U. S.) 48; 2 Story (U. S.) 421.

ACTUAL DAMAGES.—The amount of compensation to be recovered for a real loss or injury, as distinguished from a nominal sum, or a sum awarded by way of punishment of the wrong-doer. See 1 Gall. (U. S.) 429.

ACTUAL DETERMINATION.—A right of appeal is, by some statutes, given only from the actual determination of the court. What is an actual determination, see 3 Daly (N. Y.) 422; 42 How. (N. Y.) Pr. 255; 46 N. Y. 358; 47 N. Y. 67, 244.

ACTUAL EMPLOYMENT AS ATTORNEY, (in statute relative to articulated clerks). L. R. 9 Q. B. 1.

ACTUAL MARKET VALUE, (in a statute). 1 Ben. (U. S.) 241, 249.

ACTUAL NOTICE.—A notice really given in distinction from one inferred or imputed by the law on account of the existence of means of knowledge.

ACTUAL NOTICE, (defined). 14 Ga. 145.
—— (of unregistered deed). 35 Me. 556.

ACTUAL OCCUPATION OR POSSESSION.—An open, visible occupancy as distinguished from the constructive one which follows the legal title.

ACTUAL OCCUPANT, (in statute relative to ejectment). 11 Abb. (N. Y.) Pr. 101.

ACTUAL OUSTER, (defined). 45 Iowa 285.

ACTUAL PAYMENT.—In statutes permitting the creation of limited partnerships, there is usually a provision that at the formation of the partnership proof must be made of the actual payment of the capital. What is an actual payment, under such statutes, *see* 9 Barb. (N. Y.) 283; 34 Pa. St. 344.

ACTUAL PLACE OF ABODE, (in tax act). 9 R. I. 240.

ACTUAL POSSESSION, (what constitutes). 1 McLean (U. S.) 266; 11 Pet. (U. S.) 41; 30 Iowa 239.

—— (of land, in a statute). 59 N. Y. 134; L. R. 8 C. P. 281, 306; 30 Iowa 239.

—— (in statute relative to determination of claims to land). 7 Hun. (N. Y.) 616; 59 N. Y. 134.

—— (under statute, by tenant claiming compensation for improvements). 52 Me. 33.

ACTUAL RESIDENCE, (in limitation law). 73 Ill. 16.

ACTUAL SALE, (for taxes, what is). 5 Neb. 269.

ACTUAL SEIZURE, (under *fi. fa.*) L. R. 6 Ex. 203.

ACTUAL TOTAL LOSS.—A phrase used in marine insurance to denote such loss of property insured as deprives the party insured of the original thing, in distinction from any injury to the property which, although not amounting to such a loss, gives the insured the right to recover the insurance money. *See* ABANDONMENT; INSURANCE.

ACTUAL TOTAL LOSS, (in marine policy). 25 Ohio St. 64.

ACTUALLY OCCUPIED, (in a statute). 1 Pick. (Mass.) 387.

ACTUALLY RECEIVED, (in a will). L. R. 12 Ch. D. 639.

Actuarius.—A notary; one who drew up statutes; a paymaster of soldiers.

ACTUARY.—A registrar of a public body; the manager of a joint-stock company, particularly of an insurance company. In America, the officer who computes or calculates the risks and rates of premium for insurance.

ACTUM.—A deed; something done in writing, as distinguished from *gestum*, a thing done without writing.

ACTUS.—An act or action (*q. v.*), principally used in such phrases as—

Actus curiæ neminem gravabit: An act of the court prejudices no one.

Actus Dei vel legis nemini facit injuriam: An act of God or of the law does injury to no one.

Actus me invito factus, non est meus actus: An act done by me against my will is not my act.

Actus non facit reum, nisi mens sit rea: An act does not make a man guilty, unless he be so in intention.

AD.—At, for, in, to, near, until. Used in various Latin phrases, such as—

Ad abundantiorē cautelam: For greater caution.

Ad admittendum clericum: For the admitting of the clerk. A writ commanding the bishop to admit his clerk, upon the success of the latter in a *quare impedit*.

Ad aliud examen: To another tribunal.

Ad audiendum et terminandum: To hear and determine.

Ad captum vulgi: Adapted to the common understanding.

Ad colligendum bona defuncti: To collect the goods of the deceased. Special letters of administration granted to a "collector," where the probate of a will, or the appointment of a regular representative, is delayed.

Ad communem legem: At common law. An obsolete writ for the recovery, by the reversioner, after the life tenant's death, of lands wrongfully alienated by him.

Ad comparendum et ad standum juri: To appear and to stand to the law, *i. e.* abide the judgment of the court.

Ad compotum reddendum: To render an account.

Ad custagia, or ad custum: At the costs.

Ad damnum: To the damage. The clause in a writ or declaration alleging the amount of plaintiff's loss or injury.

Ad diem: At the day.

Ad ea quæ frequentius accidunt jura adaptantur: The laws are adapted to those cases which more frequently arise.

Ad effectum sequentem: To the effect following.

Ad excambium: For exchange, or compensation.

Ad exhæredationem: To the disinheritance.

Ad exitum: At the end; at issue.

Ad feodi firmam: To fee farm.

Ad fidem: In allegiance.

Ad flum medium aquæ: To the thread or centre line of the stream. *See* Ang. Waters. 4; 5 Binn. (Pa.) 12; 6 Cow. (N. Y.) 518, 579; 3 Greenl. (Me.) 269; 1 Halst. (N. J.) 1; 20 Johns. (N. Y.) 99; 4 Mas. (U. S.) 397; 1 McCord (S. C.) 580; 2 N. H. 371; 5 Paige (N. Y.) 143; 4 Pick. (Mass.) 263; 5 Id. 199; 1

Rand. (Va.) 420; 3 *Id.* 35; 12 Serg. & R. (Pa.) 205; 14 *Id.* 71, 78; 5 Wend. (N. Y.) 423, 465; 13 *Id.* 363; 5 Wheel. Am. C. L. 414; 8 *Id.* 370; 1 Yeates (Pa.) 169; 3 Barn. & Ad. 304; 1 Chit. Gen. Pr. 191-2; 1 Sim. & S. 190; 3 Stark. Ev. 1674; 1 Str. 181-6.

Ad flum medium viæ: To the centre of the way or road. See 7 Taunt. 39.

Ad finem: At, or near to the end.

Ad gaolos deliberandus: To empty the gaols.

Ad hominem: To the person. Used with reference to a personal argument.

Ad idem: Tallying in the essential point.

Ad inde requisitus: Thereunto required.

Ad infinitum: Without limit.

Ad inquirendum: To inquire. A writ commanding inquiry to be made of anything relating to a cause in the Superior Courts.

Ad interim: In the meantime.

Ad jugendum auxilium: To join in aid.

Ad jura regis: To the rights of the King.

A writ brought by the King's clerk, presented to a living, against persons endeavoring to eject him, to the prejudice of the King's title.

Ad largum: At large.

Ad litem: For the purposes of the suit.

Ad longum: At length.

Ad lucrandum vel perdendum: For gain or loss.

Ad majorem cautelam: For greater security.

Ad mordendum assuetus: Accustomed to bite.

Ad nocumentum: To the hurt, or nuisance.

Ad ostium ecclesiæ: At the church door. See DOWER.

Ad proximum antecedens fiat relatio nisi impediatur sententia: Let relation be made to the nearest antecedent, unless it be prevented by the context.

Ad quærimoniam: At the complaint of.

Ad quem: To whom.

Ad quito: Payment.

Ad quod damnum: To what damage. A writ commanding the sheriff to inquire as to what damage an act proposed to be done will tend. The writ is also said to have been formerly issued before the king granted certain liberties, such as fairs, markets, &c., which might be prejudicial to others. *Termes de la Ley, s. v.*

Ad quod non fuit responsum: To which there was no answer.

Ad rationem ponere: To cite to appear; to arraign.

Ad reparationem et sustentationem: For repairing and keeping in condition.

Ad respondendum: To answer.

Ad satisfaciendum: To satisfy.

Ad sectam: At suit of.

Ad terminum annorum: For a term of years.

Ad tristem partem strenua est suspicio: Suspicion lies heavy on the unfortunate side.

Ad tunc et ibidem: Then and there. Used in alleging time and place in an indictment.

Ad unguem: Perfectly finished.

Ad usum et commodum: To the use and benefit.

Ad valentiam, valorem: To the value.

Ad valorem: According to the value. *Ad valorem* duties are those estimated at a percentage of the value of the goods. *Specific* duties are those where a specified sum is charged upon each article irrespective of its value. Crabbe Adm. 499.

Ad ventrem inspiciendum: To inspect the womb. A writ for the summoning of a jury of matrons to determine the question of pregnancy.

Ad vitam aut culpam: An office to terminate only at death, or on the delinquency of the holder. An office held *quamdiu se bene gesserit*, so long as he conducts himself properly.

Ad voluntatem Domini: At the will of the Lord.

Ad waractum: To follow.

ADDICTIO.—The giving up to a creditor of his debtor's person by a magistrate; also, the transfer of the debtor's goods to one who assumes his liabilities.

Additio probat minoritatem: An addition shows inferiority.

ADDITION.—*LATIN:* *additio*, an adding to.

Something added to a man's name, more perfectly to identify him by showing of what *estate, degree, mystery* or *place* he is. Additions of estate are: yeoman, gentleman, esquire, &c. Additions of degree are names of dignity, such as knight, earl, duke, &c. Additions of mystery are: scrivener, painter, printer, carpenter, &c. Additions of place are additions of the place of residence, as A. B., of New York, &c.

ADDITION, (of occupation, to name in criminal pleading). Stark Cr. Pl. 52, 53.

— (to a building, in mechanic's lien act). 3 Dutch. (N. J.) 131; 5 Vr. (N. J.) 352; 3 Stockt. (N. J.) 321, 413; 8 C. E. Gr. (N. J.) 175.

ADDITIONAL, (security for guardian). 53 Miss. 626.

ADDITIONALES.—Propositions or terms added to a former agreement or contract.

ADDRESS.—(1) The technical description, in a bill in equity, of the court in which the plaintiff sues. (2) A document formally addressed to the executive by one or both houses of the legislative body, requesting him to perform some act.

ADDRESSED TO A., (a letter). 9 Wend. (N. Y.) 272.

ADEEM—ADEMPTION.—*LATIN:* *adtere*, to take away.

The use of the term as applied to legacies is taken from the Roman law, though

there it signified to revoke. (2 Just. Inst. 20; Dig. xxxiv., 4.) Ademption takes place where a legacy is given, consisting of specific property which can be identified as belonging to the testator at the time of making his will, and the testator afterwards parts with or alters the description of the property. Thus, if a testator bequeaths his gold chain to A., and afterwards sells it, or converts it into a cup or the like, the legacy is adeemed—that is to say, A. gets nothing. (Wms. Ex. 1225; Wats. Comp. Eq. 1242. See the curious case of *Morgan v. Thomas*, 6 Ch. D. 176.) It seems to be doubtful whether the testator revives an adeemed specific legacy by afterwards acquiring an article which answers the description of the original legacy. See 2 White & T. Lead. Cas. 272, notes.

ADEMPTION, (defined). 16 N. Y. 9, 40.
 — (of legacy, what is). 17 Ind. 155; 48 Id. 1; 6 Pick. (Mass.) 48; 23 N. H. 212; 2 Halst. (N. J.) 423; 2 Strobh. (S. C.) 1.
 — (of legacy, by advancement). 16 N. Y. 9.
 — (of legacy, distinguished from satisfaction). 9 Barb. (N. Y.) 35; 3 Duer (N. Y.) 477, 541.
 — (of legacies, doctrine as to not applicable to devise). 3 Duer (N. Y.) 477; Id. 541.
ADEQUATE CROSSING, (over railroad track). 37 Iowa 119.
ADHERING TO ENEMIES, (in U. S. Constitution). 2 Abb. (U. S.) 364; 2 Wheel. Cr. Cas. xxvii.

ADIRATUS.—A price or value set upon things stolen or lost, as a recompense to the owner.

ADJACENT.—**LATIN**: *ad* and *facio*, to lie near.

Lying next to or bordering upon.

ADJACENT, (defined). 19 Barb. (N. Y.) 540, 556; 6 Cow. (N. Y.) 544 n.
 — (when synon. with "contiguous"). 7 La. Ann. 76.
 — (in statute authorizing entry on lands). 1 Cooke (Tenn.) 128.
ADJACENT LAND, (in a statute). 19 Barb. (N. Y.) 556.
ADJACENT OWNER, (in statute relative to lands under water). 16 Hun (N. Y.) 380.
ADJACENT TO A RIVER, (in a deed). 20 Wend. (N. Y.) 149; 3 Cai. (N. Y.) 319; Ang. Waterc. 4.
ADJOINED TO OR OCCUPIED, (with a dwelling-house). 1 Mich. (N. P.) 27.
ADJOINING, (in public health act). 1 Ex. D. 336.
 — (in statute relative to arson). 3 Park (N. Y.) Cr. 59.
 — (in act taking lands for railroad). 14 Vr. (N. J.) 112.

ADJOINING, (as respects towns). 46 Iowa 256; 32 Barb. (N. Y.) 440; 31 N. Y. 289.

ADJOINING A FISHERY, (grant of lands). Davies 156.

ADJOINING ANY DWELLING HOUSE, (in a statute). 1 Chit. Gen. Pr. 178, 193.

— (in larceny act). Moo. & M. 341, 344.

ADJOINING BUILDINGS, (what are). Ld. Raym. 276.

ADJOINING CLOSES, (right to dig, build, &c., on their lines). 9 Barn. & C. 725; 4 Car. & P. 161; 1 Crompt. & J. 20; 4 Man. & Ry. 625; 3 Taunt. 138; 1 Ventr. 237, 239; 12 Mass. 157, 223.

ADJOINING LAND, (what is). 1 Mass. 231; 6 Id. 435; 7 Id. 499.

— (taking of, to enlarge burial ground). 103 Mass. 116.

ADJOINING OR APPURTENANT THERETO, (in a statute). 101 Mass. 24.

ADJOINING OWNER, (in lands clauses consolidation act). L. R. 4 H. L. 610.

ADJOINING PROPERTY, (in a covenant). L. R. 11 Eq. Cas. 338.

ADJOINING PROPERTY, MY, (in a will). 11 East 296.

ADJOINING THE SEA, (owner of upland.) 6 Mass. 435.

ADJOINING TO OR OCCUPIED, (in burglary statute). 1 Mich. N. P. 27.

ADJOURN.—**FRENCH**: *adjourner*.

To put off to another time, or indefinitely.

ADJOURN, (defined). 14 How. (N. Y.) Pr. 58.
 — (when synon. with "postpone"). Penn. (N. J.) 184.

— (sale of land). 14 How. (N. Y.) Pr. 58.

— (when justice may). Penn. (N. J.) 254.

Adjournamentum est ad diem dicere, seu diem dare: An adjournment is to appoint a day, or to give a day.

ADJOURNED SESSION, OR TERM, (defined). 22 Ala. 57; 6 Wheat. (U. S.) 106, 109; 1 Root (Conn.) 222.

ADJOURNING CASE, (after hearing testimony). Penn. (N. J.) 280, 521.

ADJOURNING SALE, (by sheriff, publication not necessary). 1 Green (N. J.) Ch. 311.

— (by sheriff, for want of bidders). 3 Halst. (N. J.) 271.

ADJOURNMENT.—The temporary or final dissolution of a court, legislative assembly or public meeting, and dismissal of business before it; if final, the adjournment is said to be *sine die*.

ADJOURNMENT, (by arbitrators). Coxe (N. J.) 385.

— (in justice's court). Penn. (N. J.) 254, 621, 920, 953; 5 Halst. (N. J.) 55; 7 Id. 187, 203; 2 Green (N. J.) 34, 590.

— (of legislature). 6 Rich. (S. C.) 390.

— (of parliament). 1 Bl. Com. 186.

— (of town meeting). 8 Cow. (N. Y.) 286; 5 N. Y. 22.

ADJOURNMENT DAY.—A further day appointed by the judges at the regular Sittings at *Nisi Prius* to try issues of fact not then ready for trial.

ADJUDGE.—*LATIN: adjudicare, to judge.*

To decide, settle, or decree judicially; to sentence or condemn.

ADJUDGE, (when synon. with "declare," "deem"). 6 Halst. (N. J.) 218; 67 N. Y. 107.

ADJUDGED, (in a statute). 6 Halst. (N. J.) 217; 69 N. Y. 107; 3 Burr. 1532.

ADJUDGED COSTS, (in a statute). 13 Serg. & R. (Pa.) 303.

ADJUDGED INVALID, (in statute relative to tax titles). 15 Minn. 479.

ADJUDICATAIRE.—A term used to designate a purchaser at a judicial sale, in Canada.

ADJUDICATED, (to be, in act of congress). 8 Pet. (U. S.) 445.

ADJUDICATION.—The judgment or decision of a court. The term is principally used in bankruptcy proceedings, the adjudication being the order which declares the debtor to be a bankrupt.

In Scotch law, adjudication is a process for the transfer of a debtor's estate to his creditor.—*Bouvier.*

ADJUDICATION, (when may be pleaded as *res adjudicata*). 25 Wend. (N. Y.) 64.

ADJUNCTION.—A civil law term nearly equivalent to *accession*. It means the joining of one person's property to that of another permanently, as the building a house upon another's land, painting a picture on another's canvass, and the like.

Adjunctum assessorium: An accessory or appurtenance.

ADJURATION.—A swearing or binding upon oath.

ADJUSTMENT.—*FRENCH: ajustement.*

§ 1. **Marine insurance.**—In the law of marine insurance adjustment is the operation of settling and ascertaining the amount which the assured, after allowances and deductions are made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay. (Sm. Merc. L. 392; Maud. & P. Mer. Sh. 418.) The term is similarly applicable to the other species of insurance, though not so commonly used.

§ 2. **Of average.**—Similarly, adjustment of average is the process of calculating the values at which the articles which are to contribute are to be taken. "The rule now adopted in England is to value the goods sacrificed as well as the goods saved at their selling price, if the ship arrives at her port of destination, and the valuation is made there; but if she puts back to her lading port, and the average is adjusted there, the invoice or cost price is taken, no other being well ascertainable." Maud. & P. Mer. Sh. 328. See **AVERAGE**.

ADLEGARE.—To purge one's self of crime by oath.

ADMANUENSIS.—A person who swore by laying his hands on the book.

ADMEASUREMENT.—

§ 1. In the early English law, admeasurement of dower was a writ or action brought where a widow had taken, or had assigned to her for her dower more than she was entitled to. In such a case the person aggrieved was entitled to have her proper share of the land ascertained by the sheriff. (Co. Litt. 39a. See the proceedings described in Britt. 263a, where the admeasurement is done by extent, *q. v.*) This mode of proceeding was long ago superseded by the more convenient remedy of a suit in equity brought for the same purpose, and the action of admeasurement seems now to have been abolished in England by stat. 3 and 4 Will. 4, c. 27. In some of the States the statutory proceeding enabling a widow to compel the assignment of dower is called admeasurement of dower.

§ 2. So, in English law, the action for admeasurement of pasture, was anciently the remedy against a person who surcharged a common. The modern remedy is a distress or action of trespass by the lord, or an action for damages (formerly one of the class of actions on the case) by any commoner aggrieved by the surcharge. Wms. Comm. 121.

ADMINICLE.—Aid, help, or support.

ADMINICULAR EVIDENCE.—Explanatory or completing testimony.

ADMINICULATE.—To give adminicular evidence.

ADMINISTERING POISON, (defined). 11 Fla. 247; 33 How. (N. Y.) Pr. 66, 223; 34 N. Y. 223; 23 Ohio St. 146; 4 Carr. & P. 369.

ADMINISTERING POTION, (to procure abortion).
2 Barn. & C. 608.

ADMINISTRATION. — **LATIN:** *administrare*, to assist in.

§ 1. Administration is where the rights of one or more persons in relation to an estate, property or collection of assets are adjusted and protected. The term is applied to the duties of executors, administrators, trustees, &c., in managing the property committed to their charge, paying debts, dividing the surplus assets, &c.

§ 2. **Order of administration.**—The order in which the assets (*q. v.*) of a deceased person are applied in paying his debts, so as to exhaust one class of assets before coming on another, and so as to pay one class of debts in preference to another if the assets are not sufficient for the payment of all, is called the order of administration. Thus, if a testator dies leaving as residuary personal estate sufficient to pay all his debts, they are paid out of that residue, so as to leave the legacies and real estate untouched. If the residue were not sufficient, his real estate devised for payment of debts would be taken before his real estate which had descended to his heir, and so on.

§ 3. **The various kinds of administration**, provided to meet cases of special emergency are: **ad collegendum**, for the collection and preservation of perishable property; **ancillary**, granted at the place where assets of one dying in a foreign jurisdiction are found; **cæterorum**, granted to administer the residue of an estate, where it could not be fully administered under letters previously issued, the powers granted by which have been fully exhausted; **cum testamento annexo**, granted where a testator fails to appoint an executor, or the appointee dies, is incompetent, or renounces; **de bonis non**, granted after the death of an administrator who has not fully administered; **de bonis non cum testamento annexo**, granted upon the death of an executor who has not fully administered; **durante absentia**, granted during the executor's absence, and pending the proving of the will; **durante minori ætate**, granted where the executor is a minor, and continuing until he attains lawful age to act; **foreign**, granted by a foreign power and

exercised in virtue thereof; **pendente lite**, granted (generally to an officer of the court) during the pendency of a legal contest respecting the will, or right to letters; **public**, granted to an officer called the public administrator on the death of an intestate leaving no relatives entitled to letters; **special**, granted to administer for a limited time, or in respect to some few particular effects of the decedent.

ADMINISTRATION, (in a statute). 37 Iowa 684. — (letters of, admitted by plea in justice's court). Penn. (N. J.) 166, 167, 231, 746.

ADMINISTRATOR, in the most usual sense of the word, is a person to whom letters of administration, that is, an authority to administer the estate of a deceased person, have been granted by the proper court. He resembles an executor, but, being appointed by the court and not by the deceased, he has to give security for the due administration of the estate, by entering into a bond with sureties, called the administration bond. (Browne Prob. Pr. 150, 197.) As to the varieties of administrators, see GRANT; also EXECUTOR; LETTERS OF ADMINISTRATION.

ADMINISTRATOR, (in a statute). 11 Gray (Mass.) 28.

— (judgment against). Penn. (N. J.) 457, 625, 843, 926; South. (N. J.) 288, 363, 686.

— (used instead of executor). 2 Cush. (Mass.) 184; 97 Mass. 34, 401.

ADMINISTRATOR-IN-LAW. — In Scotland, the father is termed the administrator-in-law for his children. His power as such is over any estate descended to his children except where the donor has placed it in charge of some other person, and this power continues so long as his children live with him, or at his expense; in case of a daughter it ceases upon her marriage.

ADMINISTRATORS, (A. covenants for himself, adm. to furnish apprentice). 1 Day (Conn.) 30.

— (judgment against). 4 Halst. (N. J.) 381; 3 *Id.* 272.

— (power of, to sue and be sued). 1 Halst. (N. J.) 195.

— (to act jointly). 1 Halst. (N. J.) 195.

ADMIRAL. — **SPANISH:** *almirante*; **ITALIAN:** *almiraglio*; **FRENCH:** *amiral*, from Arabic *amir*, commander, with the Arabic definite article 'al' affixed or suffixed. Diez. Etym. Wortb.

§ 1. **Lord High Admiral.**—“Very early records [English] refer to an officer of state, to whom the keeping of the sea was intrusted by the crown. He seems to have been called *custos maris*, and in later

times admiral. Whether judicial functions were originally conferred upon him or not may be matter of doubt; but as soon as maritime affairs began to assume importance, matters happening at sea, and not within any county from whence a jury could be summoned, requiring judicial investigation, were referred to him for adjudication. At what period a regular tribunal for the exercise of the duties thus cast upon the admiral was first erected, is a question much debated among antiquaries; but it is certain that in the reign of Edward III. the Court of the Admiral was firmly established, and in the succeeding reign it was sufficiently powerful to assert prominent jurisdiction." (Wms. & B. Adm. 3; Co. Litt. 260 b; Co. Fourth Inst. c. xxii.; Spelm. Post. Works 217.) The lord high admiral had two functions, first as chief of the court called after him (*see* HIGH COURT OF ADMIRALTY), though in practice this was presided over by his deputy, and secondly as exercising general authority over the naval strength of the kingdom. (H. Cox's Eng. Gov. 716.) In more modern times, however, the judge of the Admiralty Court was appointed by the crown, and the naval authority of the admiral is now always delegated to commissioners called the lords of the admiralty. *Id.* 720.

§ 2. **Admirals in the navy.**—Admiral is also the title of high naval officers; they are of various grades—rear admiral, vice-admiral, admiral, admiral of the fleet—the latter being the highest. (Encycl. Brit. v. Admiral.) In the United States there are but two grades, vice-admiral, and rear-admiral.

ADMIRALTY.—(1) The power, or officers, appointed for the management of naval affairs. (2) The building where the lords of the admiralty transact business.—*Webster.* (3) The court in which jurisdiction of maritime causes, civil and criminal, is vested. (4) The system of jurisprudence under which maritime causes are tried and determined.

§ 1. **In England,** admiralty matters may be said to include civil questions relating to the possession, mortgage, damage, salvage and towage of ships, and claims in respect of necessities and wages. They were formerly within the jurisdiction of the High Court of Admiralty, which originally had exclusive jurisdiction in all matters arising wholly upon the sea, includ-

ing crimes committed on the sea, and offences against discipline in the royal navy; but by various acts concurrent jurisdiction in criminal matters was given to other courts, so that practically its jurisdiction was limited to civil matters. (Wms. & B. Adm.; Rose. Adm., *passim*; 3 Steph. Com. 341; 4 *Id.* 311; 2 Ex. D. 63.) By the judicature acts, 1873, 1875, its jurisdiction has been transferred to the High Court of Justice, and the judge of the Admiralty Court made a judge of the Probate, Divorce and Admiralty Division of the High Court. (Jud. Act, 1873, §§ 3, 31.) As to the various kinds of admiralty actions, *see* ACTION; *also* APPRAISEMENT; ARREST; BAIL; CAVEAT; INTERVENE; MARSHAL; MONITION; PRIZE.

§ 2. **In the United States,** the admiralty jurisdiction is primarily vested in the United States District Court, subject to removal in certain cases to the Circuit Court and ultimately to the Supreme Court. The territorial courts, also, have admiralty powers in some cases. As to locality, the jurisdiction is not confined, as in England, to places where the tide ebbs and flows, (1 Biss. (U. S.) 29; 3 Blatchf. 435; 11 Wall. 1), but extends to all navigable waters, including the great lakes upon the Canadian border, (Rev. Stat. § 566; 4 Wall. 555), and the following matters, among others, have been held to be within it: *Accounting* between part owners and others, (Abb. Adm. 529, 579; 2 Curt. 79, 427; 17 How. 477; 1 Newb. Adm. 95; 2 Paine 202; 11 Pet. 175; 3 Ware 28). *Affreightment contracts*, (Abb. Adm. 67; 1 Blatchf. 173; 3 *Id.* 279; 2 Curt. 271; 1 Dill. 460; 5 Wall. 481). *Questions of average*, (2 Curt. 72; 7 How. 729; 8 *Id.* 615; 19 *Id.* 162; Olc. Adm. 12, 89). *Controversies over bills of lading*, (1 Blatchf. 358; 2 Curt. 271; Olc. Adm. 12). *Bottomry bonds*, (Crabbe 326; 2 Gall. 191; 2 Sumn. 157; 1 Wash. C. C. 293). *Charter parties*, (1 Blatchf. 360, 569; 22 How. 491; 1 Ware 149; 2 *Id.* 82). *Claims of mechanics and materialmen*, (3 Blatchf. 528; 14 *Id.* 24; Crabbe 426, 479, 534; Gilp. 1, 473; Olc. 229; 9 Wheat. 409; 12 *Id.* 611). *Claims for salvage services*, (1 Blatchf. 414; Blatchf. & H. 34, 235; Brown Adm. 68). *Controversies between carrier and passenger*, (1 Blatchf. 360, 569; Gilp. 184; 4 Wall. 411). *Claims under marine policies*, (Bee Adm. 199; 2 Curt. 322; 2 Gall. 398; 3 Mas. 6; 11 Wall. 1). *Forfeitures*, (4 Biss. 156; 11 Blatchf. 416; 1 Wheat. 9; 12 *Id.* 1). *Loans and advances*, (Bee Adm. 116; 4 Biss. 234; 17 How. 477; Newb. 514; Olc. 120). *Mort-*

gages of vessels, (1 Ben. 461; 3 Blatchf. 67; 2 Hughes 70; 2 Woodb. & M. 87, 92, 118). *Ransom bills*, (Bee 128; 2 Gall. 325). *Claims for seamen's wages*, (Abb. Adm. 490, 529; 10 Wheat. 428; 2 Woodb. & M. 48). *Ship building contracts*, (3 Ben. 163; 1 Cliff. 43, 55; 21 Wall. 532). *Suits for pilotage*, (1 Low. 176; 1 Mas. 508; 10 Pet. 108; 13 Wall. 236). *Suits for towage*, (5 Ben. 72; 22 How. 78; 1 Sprague 588). *Suits for wharfage*, (5 Ben. 60, 74; 2 Gall. 483; Gilp. 101; 5 Otto 68). *Title to or possession of vessels; petitory suits*, (2 Cent. 79, 426; 18 How. 267; 3 Ware 134); *possessory actions*, (5 Ben. 252; 8 *Id.* 429; 1 Low. 491; Newb. 205). *Questions of prize*, (Bee 60; 4 Cranch. 5 *n*; 7 *Id.* 116; 9 *Id.* 244; 2 Dall. 36; 1 Wheat. 238). *Seizures on high seas*, (8 Ben. 429; 1 Mas. 96; 3 Dall. 121; 2 Gall. 29; Olc. 18; 1 Wheat. 238; 2 *Id.* 1; 10 *Id.* 473). *Personal torts*, (Blatch. & H. 487, 493; 1 Curt. 434; 1 McAll. 467; 1 Ware 75, 91). *Other maritime torts*, (Bee 51; 1 Ben. 536; 2 *Id.* 547; 5 *Id.* 53; 2 Sumn. 1; 2 Wall. 383; 8 *Id.* 15; 10 Wheat. 473). *Criminal offences*, (3 Blatchf. 435; 12 Pet. 72; 4 Wash. C. C. 371; 1 Woodb. & M. 401).

ADMISSIBLE.—Evidence (that is, the statements of witnesses or the production of documents or things) is said to be admissible when the court or judge is bound to receive it, that is, allow it to be adduced, at a trial or other inquiry. The question whether certain evidence is admissible is one of law (Best Ev. 105), and depends either upon the nature of the fact offered to be proved (*see* RELEVANCY), or upon the means by which it is offered to be proved, as in the case of hearsay evidence, secondary evidence, &c. (*See* EVIDENCE.) When a judge at a trial rejects admissible evidence, or admits inadmissible evidence, this may be a ground for a new trial. *See* TRIAL.

ADMISSION.—

§ 1. **To benefice.**—Admission, in English ecclesiastical law, is where the bishop, upon examination of a person presented to a benefice within his diocese, approves of him as a fit person "to serve the cure of the church." Phill. Ecc. L. 567; Co. Litt. 344a. *See* INSTITUTION; INDUCTION.

§ 2. **In pleading and evidence.**—In the law of pleading and evidence, an admission is an acknowledgment that an alle-

gation is true. It may be made extrajudicially, as where a person admits his indebtedness. An admission *in judicio* may be made by a party to an action either expressly by a notice or pleading, or impliedly by failure to deliver a pleading or to traverse an allegation made by his opponent; sometimes the parties agree to make admissions of facts or documents in order to save the expense of proving them.

§ 3. **Admission to membership.**—The act of receiving a person into the membership of a particular class is called the admission of such person, as the admission of an attorney to the bar.

ADMISSION, (of guardian, in statute). 5 Halst. (N. J.) 335.

ADMISSIONS, (by joint covenantor). 1 Harr. (N. J.) 42.

— (by prisoner, effect of). 15 Wend. (N. Y.) 152, 231.

— (conclusive and inconclusive). 15 Wend. (N. Y.) 311.

— (of party, before justice). 5 Watts (Pa.) 111; 2 Halst. (N. J.) 140; 4 *Id.* 347; 2 Green (N. J.) 33.

ADMIT.—LATIN: *ad*, to, and *mittere*, to send.

To allow, receive or take. *See* ADMISSION.

ADMITTANCE.—In English real property law, the lord of a manor is said to admit a person as tenant of copyhold lands forming part of the manor when he accepts him as tenant of those lands in place of the former tenant, *e. g.* on the surrender, devise or death intestate of the former tenant: in the last case, it is called admittance on descent. In theory, the lord admits the surrenderee, devisee or heir as a favor, and hence in the enrolment of an admittance on the court rolls it is stated that the surrenderee "prays to be admitted;" but, in fact, the lord is bound to admit the new tenant if his claim is in accordance with the custom of the manor; and hence an admittance in such cases is opposed to a voluntary admittance, which takes place where the lord makes a voluntary grant. *See* SURRENDER; GRANT.

ADMITTENDO CLERICO.—A writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to admit and institute the clerk or presentee of the plaintiff.

ADMITTENDO IN SOCIUM.—In English law, a writ associating certain gentlemen of the county to sit with the justices of assize.

ADMONITION.—A reprimand administered by a judge to an accused person on being discharged. It is the first and lightest form of ecclesiastical censure, and is in the nature of a warning, which, if not obeyed, may be followed

by a severer censure, *e. g.* suspension (*q. v.*) See *Phill. Ecc. L.* 1367, 1376. See *MONITION*; *CENSURE*.

ADMORTIZATION.—The reduction of property of lands or tenements to mortmain, in the feudal customs.

ADNEPOS.—The son of a great-great-grandson.

ADNEPTIS.—The daughter of a great-great-granddaughter.

ADNICHILED.—Annulled; cancelled; made void.

ADNOTATIO.—A signing. The term was used in the civil law to denote the indulgence of the emperor, signed with his own sign-manual, by which a casual homicide was excused.

ADOLESCENCE.—The period between 12 in females and 14 in males, till 21 years of age.

ADOPT—ADOPTION.—*LATIN*: *adoptare*, to choose.

§ 1. **Of contract.**—To adopt a contract is to accept it as binding, notwithstanding some defect which entitles the party to repudiate it. Thus, when a person affirms a voidable contract, or ratifies a contract made by his agent beyond his authority, he is said to adopt it. See *AFFIRM*; *RATIFY*; *VOIDABLE*.

§ 2. **Of children.**—An act by which a person appoints as his heir the child of another. The institution of adoption of children is not known to English law, that is, a person cannot by any declaration put a stranger in the same position as a natural born child. But in New York, Massachusetts, New Jersey and some others of the States the adoption of children is made lawful and regulated by statute. *N. Y. Laws of 1873*, ch. 830; *N. J. Rev. p.* 1345, § 6.

ADOPT, (a post route). *Dev. (Ct. of Cl.)* 47. — (in statute authorizing adoption of children). *13 La. Ann.* 516.

ADOPTING, (the acts of A). *9 East* 214.

ADPROMISSOR.—A surety; a peculiar species of *fide jussor*.—*Calv. Lex.*; *Bouvier*.

ADRECTARE.—To do right, satisfy or make amends.

ADROGATION.—The adoption of an *impubes*, *i. e.* a male under 14, or a female under 12 years of age.

ADSCRIPTI VEL ADSCRIPTII GLEBÆ.—A kind of slaves, among the Romans, attached to and transferred along with the land which they cultivated.

ADRIFT, (in a statute). *2 Allen (Mass.)* 549.

ADSESSORES.—Side judges. Assistants or advisers of the regular magistrates, or appointed as their substitutes in certain cases.—*Calv. Lex.*

ADSTIPULATOR.—An accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment.

ADULT.—*LATIN*: *adultus*.

At common law a person of the full age of twenty-one years; under the civil law a boy of fourteen, or a girl of twelve years.

ADULTERATION.—The offence of wrongfully mixing cheap or inferior substances with another substance, so that the compound may be sold as pure or genuine.

ADULTERATION, (of milk). *5 Park. (N. Y.) Cr.* 311.

ADULTERINE.—The issue of an adulterous intercourse. Such children were more unfavorably regarded by the Roman and Canon laws than other illegitimate children; they were denied the name of natural children and refused admission to orders.—*Bouvier*.

ADULTERINE GUILD.—Associated traders acting as a corporation without a charter, and paying a yearly fine for permission to exercise their usurped privilege. *Sm. Wealth of Na.* book 1, ch. 10.

ADULTERIUM.—A fine imposed as a punishment for the commission of adultery.

ADULTERY.—*LATIN*: *adulterium*.

§ 1. **As a ground for divorce.**—Adultery consists in the sexual intercourse between a married person and a person other than his or her husband or wife. In England, adultery by the husband is a ground for judicial separation, or (when combined with other offences) for dissolution of marriage. Adultery by the wife is by itself ground for dissolution of marriage; it may also form the subject of a petition by the husband against the alleged adulterer and the wife for damages alone. (*Browne Div.* 143; *20 and 21 Vict. c. 85*, § 33.) (See *CO-RESPONDENT*; *CRUELTY*; *DESERTION*; *DISSOLUTION*.) But in this country no such distinction is made by the statutes between adultery by the husband and by the wife. See *DIVORCE*.

§ 2. **As a crime.**—In those States which make adultery a punishable offence without defining it by statute, sexual intercourse between a married woman and a man other than her husband, is held by all authorities to constitute the crime, and in some of the States this is held to be an exclusive definition of the offence, on the ground that the gist of the crime is the danger of introducing spurious heirs into a family. In other States, however, it is held that the offence is committed by sexual connection between a man and a woman, one of whom is lawfully married to a third person, and that whether the married person is a man or a woman makes no difference. In some of the authorities a distinction is observed between double and single adultery, the former being where both parties are married to other persons, and the latter where but one of them is married.

ADULTERY, (defined). 56 Ind. 263.

— (as a cause for divorce). Reeves Dom. Rel. 207; 1 Hagg. Ec. 767; 1 Pick. (Mass.) 506; 5 Mass. 320.

— (as a crime, what constitutes). 1 Crim. L. Mag. 577; 22 Iowa 364; 9 N. H. 515; 2 Blackf. (Ind.) 318; 2 Strobbh. (S. C.) Eq. 174; 6 Ala. 864; 21 Pick. (Mass.) 509; 50 Wis. 65; 1 Harr. (N. J.) 380; 1 Yeates (Pa.) 6; 1 Pinn. (Wis.) 91.

— (as a crime, what is not). 2 Dall. 124; 6 Gratt. (Va.) 672; 27 Ala. 23; 35 Tex. 113; 1 Mon. T. 358; 1 Pick. (Mass.) 136; 43 Me. 258; 4 Minor (Ala.) 335.

— (what *prima facie* evidence of). 14 Wend. (N. Y.) 637.

ADVANCE, (in a will). 25 Ga. 352.

— (in sense of loan beforehand). 7 Otto (U. S.) 117.

ADVANCE MONEY ON GOODS, (company chartered to). Ang. & A. Corp. 147.

ADVANCE OR PAY, (in a will). L. R. 8 Ch. App. 813.

ADVANCED, (money lent and, in declaration). 3 Wils. 389.

ADVANCED FULLY, (when child said to be). 1 Mad. Ch. 630; 1 Atk. 406.

ADVANCED MONEY, (book account no evidence). 1 Halst. (N. J.) 96.

ADVANCEMENT.—OLD FRENCH: *advancement*; N.-FRENCH: *avancement*. "Advancement" seems to be an abbreviation of the expression "advancement in the world."

§ 1. **Advancement of children.**—In its most general sense, advancement is an expenditure of capital or principal money for the benefit of a person who is, to a certain extent, dependent or unprotected. Thus, in wills and settlements containing limitations in favor of children on attain-

ing twenty-one, power is generally given to the trustees or guardians to apply for the advancement or benefit of each child, during its minority, part of the capital or share of the property to which it will become entitled on attaining twenty-one. Elph. Conv. 310; Wats. Comp. Eq. 584. See MAINTENANCE; ACCUMULATION.

§ 2. **By portion.**—The statute 22 and 23 Car. 2 c. 10, provides that, in dividing the estate of an intestate, every child "who shall be advanced by the intestate in his lifetime by portion," shall only receive so much of the estate as, with the portion advanced, will make his share equal to those of the other children. An "advancement by portion," within the meaning of the statute, is a sum given by a parent to establish a child in life (as by starting him in business), or to make a provision for the child (as on the marriage of a daughter). L. R. 20 Eq. 155. See HOTCHPOT.

§ 3. **Doctrine of advancement.**—The equitable doctrine of advancement is that, if a purchase or investment is made by a father, or person in *loco parentis*, in the name of a child, a presumption arises that it was intended as an advancement; that is, for the benefit of the child, so as to rebut what would otherwise be the ordinary presumption in such cases, of a resulting trust in favor of the person who paid the money. 2 Cox 92; 1 White & T. Lead. Cas. 184; Wats. Comp. Eq. 872; 10 Ch. D. 474. See TRUST.

§ 4. **Effect of advancement.**—The distributive share in the parents' estate, of a child to whom an advancement has been made, is thereby reduced *pro tanto*—in some jurisdictions with interest added from the date of the advancement. In some States the child may keep his advancement, though greater than his share, and abandon the latter, or he may abandon the advancement and receive his share, but this privilege is limited to cases of intestacy.

ADVANCEMENT, (defined). 18 Ill. 167; 46 N. H. 27; 23 Ind. 440; 17 Mass. 358; 51 Barb. (N. Y.) 612; 31 Pa. St. 337; 1 Swan (Tenn.) 487; 1 Grant (Pa.) Cas. 369; 17 Mass. 358; 1 Mad. Ch. 626; 1 P. Wms. 111; 2 P. Wms. 435, 440; 1 Swanst. 13; 3 Atk. 527; *Id.* 213; 2 Atk. 277; 3 Brews. (Pa.) 314; 24 Miss. 619; 5 Miss. 356.
— (what is not). 3 P. Wms. 317 n. (o); 3 Atk. 450; 11 Ired. (N. C.) L. 148; 8 Ala. 414.

1 Head (Tenn.) 300; 2 Grant (Pa.) Cas. 304; 2 Jones (N. C.) Eq. 137; 5 Rich. (S. C.) 15; 4 Pick. (Mass.) 21; 17 Mass. 93.

ADVANCEMENT, (brought into hotchpot). 3 Desaus. (S. C.) 202; 1 Serg. & R. (Pa.) 429; 3 Whart. (Pa.) 405; 1 Eq. Cas. Abr. 154; 2 Vern. 638; 8 Ves. 51; 9 *Id.* 413, 425; 14 *Id.* 324; 5 Wheel. Am. C. L. 318; 1 Com. Dig. 486; 7 Com. 1.

—— (by deed from father to son). 1 Mass. 525.

—— (distinguished from a loan). 2 Eden 180.

—— (how proved). 5 Watts (Pa.) 80; Penn. (N. J.) 1010; 6 Watts (Pa.) 86, 153; 2 Pick. (Mass.) 337.

—— (in a will). 3 Pick. (Mass.) 450.

—— (jurisdiction of Orphans' Court over).

6 Watts (Pa.) 309.

—— (mode of ascertaining and enforcing).

5 Rawle (Pa.) 213.

—— (of subsequent incumbrance). 1 Bro. C. C. 63.

—— (power of, to trustees). L. R. 4 Eq. Cas. 661.

—— (provision by will considered such in life time of testator). 10 Ves. 489; 18 *Id.* 494.

—— (purchase by father in name of child held to be). 8 Ves. 199; Willis Trust. 61; 7 Wheel. Am. C. L. 159; 2 Vern. 19.

—— (release in consideration of). 8 Mass. 143.

—— (rights of child under). 6 Paige (N. Y.) 62.

—— (to child, may reduce widow's distributive share). 1 Pick. (Mass.) 157.

—— (to wife, when husband has resulting trust). 19 Wend. (N. Y.) 414.

ADVANCEMENT OF CHRISTIANITY IN AMERICA, (devise for the). 1 Ves. 243.

ADVANCEMENT IN FULL, (what is). 2 P. Wms. 527.

ADVANCEMENT PRO TANTO, (what is). 2 P. Wms. 274, 442, 444, 560.

ADVANCES.—Money paid to the owner or consignor of goods, by a factor or agent employed to sell them on commission, in advance of the sale. The agent, in such a case, has a lien upon the goods when received for such advances, and may reimburse himself out of their proceeds when sold. He may also sue for a balance due in case the proceeds of the sale do not equal the amount advanced.

ADVANCES, (defined). 51 Barb. (N. Y.) 597.

—— (future). 1 McCord (S. C.) Ch. 414; *Id.* 265; 1 T. B. Monr. (Ky.) 69.

—— (future, deposit of bill as security for). 1 Moo. 543.

—— (future, mortgage for). 3 Cranch (U. S.) 89; 4 Mas. (U. S.) 515; 5 Binn. (Pa.) 585; 17 Serg. & R. (Pa.) 419; 1 Watts (Pa.) 388; *Id.* 135; 6 *Id.* 57; 7 Wheel. Am. C. L. 61; 2 Cow. (N. Y.) 247.

—— (future, *respondentia* bond for). 1 Pet. (U. S.) 386.

ADVANCES, (in a statute relative to advances to the state). 6 Nev. 283.

—— (in a will). 110 Mass. 477; 10 Barb. (N. Y.) 69.

—— (surety for). 10 Ves. 409.

—— (to include disbursements). 8 Bing. 371.

—— (what included). 6 Nev. 283; 5 So. Car. 468.

ADVANTAGE, (to her best, in devise of land to A. to sell). Cro. Jac. 199.

—— (undue, of confidence). 1 Wils. 294; 1 Atk. 352; Sax. (N. J.) 346; 12 Wheat. (U. S.) 199; 1 Wend. (N. Y.) 361; 2 Cox Ch. 331.

ADVENA.—A Roman law term to designate one who has departed from the country of his birth and settled in another, but has not become a citizen of the country of his adoption.

ADVENTITIA BONA.—Goods falling to a man otherwise than by inheritance.

ADVENTITIA DOS.—A dowry or portion given by some person other than the parent of the recipient.

ADVENTURE.—The sending to sea of a ship or goods at the risk of the sender; also the ship or goods so sent.

ADVERSARIA.—Rough memoranda; common-place books.

ADVERSE CLAIM.—A claim of a third person to goods upon which an execution or attachment levy is sought to be made. In such a case, the sheriff may require the creditor and such third person to settle the right to the goods by an interpleader; and so a wharfinger or other person in whose possession are goods which the seller attempts to stop in transit, while the buyer insists upon their delivery, may have an interpleader requiring the parties to settle their adverse claims.

ADVERSE ENJOYMENT.—The possession or exercise of an easement or privilege, under a claim of right against the owner of the land out of which such easement or privilege is derived. 2 Washb. Real Prop. 42.—*Bouvier*.

ADVERSE PARTY, (in statute). 30 Ohio St. 444; 59 Tenn. 354; 6 Halst. (N. J.) 318; 49 Wis. 349; 38 Cal. 637; Coxe (N. J.) 445.

ADVERSE POSSESSION.—(1) A possession or enjoyment of real property, with claim or color of title, under such circumstances as to render the possession inconsistent with and hostile to the claim of title in another. If continued a certain

time (*See* LIMITATION) a grant will be presumed, and a good title will vest in the occupier. It must be actual, open and notorious; the occupier must not claim under the same title as that under which his adversary claims; and his possession must not be consistent with the latter's title. (*See* POSSESSION.) (2) Under the champerty acts of the various States forbidding the selling of pretended titles, the rightful owner of land held by another adversely cannot convey the land during the continuance of such adverse possession; he must obtain possession by means of an ejectment, or in some other lawful manner, before his title becomes marketable. *See* CHAMPERTY.

ADVERSE POSSESSION, (defined). 43 Ala. 633; 57 *Id.* 304; 5 Day (Conn.) 181; 8 Conn. 439; 33 Ga. 539; 30 Md. 409; 3 Watts (Pa.) 74, 205, 345; 43 Ala. 633; 54 Cal. 547; 3 Pa. 134; 2 Rawle (Pa.) 305; 17 Serg. & R. (Pa.) 104; 3 Wend. (N. Y.) 337, 357; 4 *Id.* 507; 7 *Id.* 62; 8 *Id.* 440; 9 *Id.* 523; 15 *Id.* 597; 4 Paige (N. Y.) 173; 2 Gill & J. (Md.) 173; 6 Pet. (U. S.) 61, 291; 11 *Id.* 41; 4 Vt. 155; 14 Pick. (Mass.) 461.

— (distinguished from "ouster" or "disseisin"). 9 Wend. (N. Y.) 511.

— (what amounts to, under statutes of limitation). 3 Metc. (Mass.) 510; 5 Cow. (N. Y.) 346; 8 *Id.* 589; 54 Barb. (N. Y.) 9; 9 Cow. (N. Y.) 653.

— (what will avoid a deed). 39 Barb. (N. Y.) 513.

— (what will not avoid a deed). 3 Cow. (N. Y.) 89; 4 Hill (N. Y.) 469.

ADVERSE USER, (defined). 63 Me. 434.

ADVERSE VERDICT, (in proceedings for assessment of land damages). 16 Gray (Mass.) 256.

ADVERSE WITNESS.—*See* WITNESS.

ADVERTISE, (30 days previous to the sale). 1 Mass. 247; 10 *Id.* 105, 115.

ADVERTISED, (duly, recital in sheriff's deed). 7 Halst. (N. J.) 336-7; 1 Green (N. J.) L. 141.

ADVERTISEMENT.—*LATIN:* *advertere*, to turn to.

§ 1. An announcement giving information or knowledge to individuals or the public, either in writing or in print; a notice published in a newspaper, or by means of placards or handbills.

§ 2. **Legal.**—Advertisements are often required to be made by law, for the purpose of giving notice of acts proposed to be done, and such advertisements are generally, but not always, equivalent to notice. Thus, an advertisement of the dissolution of a partnership is not, of itself, notice to

persons who have previously dealt with the firm, but to others it is. *See* NOTICE.

§ 3. **Of reward.**—When a person makes an offer by an advertisement (*e. g.* of a reward for giving information or restoring lost property), and another person performs the condition, this makes a contract on which the latter can sue the advertiser. Poll. Cont. 170.

ADVERTISEMENT, (of sale of land). 8 Wheel. Am. C. L. 272; 1 Ves. 210, 221; 2 Pa. 381; 12 Wheat. (U. S.) 570; 5 Johns. (N. Y.) Ch. 42; 7 Cow. (N. Y.) 13; 2 Pa. 218; 6 Munf. (Va.) 305.

ADVERTISEMENTS OF QUEEN ELIZABETH are certain articles or ordinances drawn up by Archbishop Parker and some of the bishops in 1564, at the request of Queen Elizabeth, the object of which was to enforce decency and uniformity in the ritual of the church. The queen subsequently refused to give her official sanction to these advertisements, and left them to be enforced by the bishops under their general powers. Phillim. Ecc. L. 910; L. R. 2 P. D. 276; *Id.* 354.

ADVERTISING, (for certain period of time). 3 Green (N. J.) L. 81; 3 Johns. (N. Y.) Ch. 74; 8 Cow. (N. Y.) 260; 2 Cai. (N. Y.) 385; 1 Wend. (N. Y.) 90; 1 Mass. 247, 250, 256; 10 Mass. 114; 4 Pet. (U. S.) 349.

— (sale by sheriff). 2 Halst. (N. J.) 153.

ADVICE.—(1) Counsel; suggestion; an opinion offered and recommended as worthy to be acted on. (2) Information sent by one business man to another by letter or telegram, respecting some transaction in which he is interested.

ADVICE, (legal intendment on act following). 13 Mass. 359; 5 Wheel. Am. C. L. 120.

ADVISED, (in affidavit "is advised and believes"). 1 Dowl. & Ry. 155.

ADVISEDLY, (defined). 15 Moo. P. C. 47.

— (in an indictment). 4 Com. Dig. 685 n. (d); Stark. Cr. Pl. 183.

ADVISEMENT, (cause continued for). 7 Mass. 393; South. (N. J.) 487.

ADVOCATE.—*LATIN:* *ad*, to, and *vocare*, to call.

In its popular sense, an advocate is a person who argues cases in court on behalf of his clients. The term is also used in England in a technical sense to denote a person admitted by the Archbishop of Canterbury to practice in the Court of Arches in the same way as a barrister practices in the temporal courts.

ADVOCATE-GENERAL.—The adviser of the crown in England, on questions of naval and military law.

ADVOCATE, LORD.—The principal crown lawyer in Scotland.

ADVOCATES, FACULTY OF.—The bar of Scotland in Edinburgh.

ADVOCATI ECCLESIAE.—A term used in the ecclesiastical law to denote the patrons of churches who presented to the living on an avoidance. This term was also applied to those who were retained to argue the cases of the church.

ADVOCATI FISCI.—Those who, under the civil law were selected by the emperor to argue causes affecting the revenues.

ADVOCATION.—The process used in Scotch law to bring an action from a lower to a higher court before final judgment.

ADVOCATUS DIABOLI.—The advocate who argues against the canonization of a saint.

ADVOWEE, or AVOWEE.—The person or patron who has a right to present to a benefice.

ADVOWEE PARAMOUNT.—The sovereign, or highest patron.

ADVOWSON.—NORMAN-FRENCH: *avouement*. (Britt. 22a; Mireh. Advows. 6; Du Cange, s. v. *Advocatus*); MEDIEVAL-LATIN: *advocatio*, apparently from *advocatus*, the patron or person who was bound to defend and protect the rights of the church.

The right of presenting to a rectory, vicarage or other ecclesiastical benefice whenever it is vacant. (See PRESENTATION.) It may belong to a private person, or a bishop or other dignitary, or to the crown. An advowson belonging to the bishop of the diocese is technically the right of collation; some advowsons are called donatives, and a few (such as benefices attached to cathedrals) are elective; an ordinary advowson is sometimes called, by way of distinction, a presentative advowson. An advowson is an incorporeal hereditament, and is either appendant or in gross. Phillim. Ecc. L. 328; 2 Bl. Com. 21; Co. Litt. 17 b, 119 a.

Advowson, (devise of). 3 Brod. & B. 36.

ADVOWTRY, or ADVOUTRY.—The offense, by an adulteress, of continuing to live with the man with whom she committed the adultery.—*Cowell; Termes de la Ley.*

Ædificare in tuo proprio solo non licet quod alteri noceat: It is not permitted to build upon one's own land that which may be injurious to another.

Ædificatum solo, solo cedit: That which is built upon the land goes with the land.

ÆFESN.—The remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods.

Æquitas est correctio legis generaliter lata, qua parte deficit: Equity is a correction of law when too general, in the part in which it is defective.

Æquitas est correctio quædam legi adhibita, quia ab ea abest aliquid propter generalem sine exceptione comprehensionem: Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it.

Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa; sed sola ratione consistens: Equity is a sort of perfect reason, which interprets and amends the written law; comprehended in no code, but depending on reason alone.

Æquitas est quasi æqualitas: Equity is as it were equality.

Æquitas nunquam contravenit leges: Equity never counteracts the laws.

Æquitas sequitur legem: Equity follows law.

Æquitas uxoris, liberis, creditoribus maxime favet: Equity favors wife and children, creditors most of all.

Æquum et bonum est lex legum: That which is equal and good is the law of laws.

ÆS ALIENUM.—A civil law term signifying a debt; the property of another; borrowed money, as distinguished from *æs suum*, one's own money.

ÆSTIMATIO CAPITIS.—Fines paid for killing persons, according to their degree and quality, by estimation of their heads, ordained by King Athelstane.

Æstimatio præterit delicti ex postremo facto nunquam crescit: The weight of a past offence is never increased by a subsequent fact.

ÆTATE PROBANDA.—A writ, formerly in use in England, commanding the sheriff to summon twelve men, to be before commissioners appointed, to ascertain whether the king's tenant, holding in chief by chivalry, had arrived at full age to take his lands into his own hands.

AFFECT, (parol evidence not to, written instrument). 1 Cox Ch. 407.

AFFECT HIS ESTATE BY ALIENATION, CHANGE, &c., (not to, in a will). Coop. C. C. 259.

AFFECTING, (foreign ministers, in U. S. Constitution). 9 Wheat. (U. S.) 855.

AFFECTING THE JUDGMENT, (in a statute). 11 So. Car. 122.

Affectio tua nomen imponit operi tuo: The affection of a person gives a name to his work.

AFFECTION.—A species of pledge or mortgage to secure the payment of money or the performance of some duty or service.—*Techn. Dict.*

Affectus punitur licet non sequatur effectus: The intention is punished, although the consequence does not follow.

AFFEEER, or AFFERE.—N.-FRENCH: *affeurer*, to assess, (Loysel, Inst. Cout. Gloss. s. v.) from the low Latin *afforare*, to fix a price, from *forum*, a market. Littré, s. v. *Afforage*.

An old word signifying to assess or tax; it was applied principally to amerciaments, which were affeered or assessed by a jury. 8 Co. 39; Co. Litt. 126 b.

AFFEEERER, or AFFEEEROR.—One who affeers. One sworn to assess a penalty.—*Cowell*.

AFFIANCE.—LATIN: *affidare*, to pledge.

A plighting of troth; a mutual agreement to marry.

AFFIANT.—A person who makes and subscribes an affidavit. See DEPONENT.

AFFIDATIO DOMINORUM.—An oath taken by the lords in parliament.

AFFIDATUS.—A tenant by fealty; a retainer. One who, not a vassal, places himself under the protection of one more powerful than himself.

AFFIDAVIT.—

§ 1. An affidavit is a written statement in the name of a person called the affiant or deponent, by whom it is voluntarily signed and sworn to or affirmed before an officer authorized to administer an oath. (See DEPOSITION; EXAMINATION; COMMISSIONER.) It is usually made in an action or other judicial proceeding (See DECLARATION); and in that case the affidavit consists of the title (*q. v.*), the body (which contains the statement, and is generally divided into paragraphs), the signature of the deponent, and the jurat. Hunt. S. 77; Sm. Act. (12), 81 (*q. v.*)

§ 2. In practice affidavits are commonly used to present the evidence to the court upon the hearing of a motion. They are also used upon applications addressed to the favor of the court for the purpose of procuring delay, opening defaults, etc.

AFFIDAVIT, (defined). 80 Ill. 307; 1 Mich. N. P. 189; 1 Abb. (N. Y.) Pr. N. S. 48; 12 Barb. (N. Y.) 527; 72 Mo. 371.

—— (distinguished from "deposition"). 3 Blatchf. (U. S.) 456.

—— (distinguished from "oath"). 28 Wis. 460.

—— (ex parte). Penn. (N. J.) 65.

—— (must be written). 77 N. C. 333.

—— (not subscribed by deponent). 1 Robt. (N. Y.) 222; 1 Green (N. J.) 324.

AFFIDAVIT, (on motion to dissolve injunction). 7 Abb. (N. Y.) Pr. 322.

—— (to authorize attachment). 77 N. C. 333.

—— (to change venue). Penn. (N. J.) 514; 2 Halst. (N. J.) 171, 202, 350.

—— (to contradict return of justice). Penn. (N. J.) 145.

—— (to obtain attachment against witness for non-attendance). 12 Barb. (N. Y.) 527.

—— (to open judgment). 1 South. (N. J.) 30; 1 Halst. (N. J.) 344; 2 *Id.* 199 *n.*

AFFIDAVIT FOR APPEAL, (indorsed on bond). 2 Green (N. J.) 117.

AFFIDAVIT MAN, (calling another an, libellous). 2 Atk. 471.

AFFIDAVIT OF DEFENCE.—An affidavit stating that the defendant has a good defence to the plaintiff's action on the merits of the case. Also called an affidavit of merits.

AFFIDAVIT OF JUROR, (to prove ground of verdict). Penn. (N. J.) 390.

—— (as to misconduct of jury). 4 Bos. & P. 326; Coxe (N. J.) 32; Penn. (N. J.) 278; 3 Harr. (N. J.) 450.

—— (of party tampering with jury). Coxe (N. J.) 123; South. (N. J.) 687.

—— (to impeach verdict). 1 South. (N. J.) 486; 9 Wend. (N. Y.) 244.

AFFIDAVIT OF SERVICE.—An affidavit proving the service of a writ, notice, or other document, is called an affidavit of service. See SERVICE.

AFFIDAVIT TO HOLD TO BAIL.—An affidavit made to procure the arrest of the defendant in a civil action.

AFFILIATION.—LATIN: *adfilatio*, from *ad* and *filius*, a son.

The process of fixing a man with the paternity of a bastard child, and the obligation to maintain it. An affiliation order is an order made by a magistrate on the putative father of a bastard, requiring him to pay a periodical sum to the mother for the child's maintenance. See BASTARD; FILIATION.

AFFINES.—Connections by marriage, including the parties to the marriage and their relatives.

AFFINITAS AFFINITATIS.—The connection which has neither consanguinity nor affinity, as, the connection between a husband's brother and the wife's sister.

Affinitas dicitur, cum duæ cognationes, inter se divisæ, per nuptias copulantur, et altera ad alterius fines accedit: It is called affinity, when two fami

lies, divided from one another, are united through marriage, and either approaches the confines of the other.

AFFINITY.—Relationship by marriage; that is, the relationship between a husband and his wife's kindred, and between the wife and her husband's kindred. Affinity is a bar to marriage within the prohibited degrees: thus, in England, a man may not marry the sister of his deceased wife, for she is related to him in the second degree by affinity. (2 Steph. Com. 243.) But such a marriage is lawful in the United States. See CONSANGUINITY; MARRIAGE.

AFFINITY, (defined). 2 Barb. (N. Y.) Ch. 331; 1 Den. (N. Y.) 25, 186; 45 N. Y. Super. Ct. 80, 84.

—— (ceases on dissolution of marriage). 2 Barb. (N. Y.) Ch. 331; 7 Cow. (N. Y.) 478. *Contra*, 29 Me. 531.

—— (to disqualify judge). 1 Den. (N. Y.) 25.

AFFIRM.—*LATIN*: *affirmare*, to make firm.

To declare or assert positively.

§ 1. **Contract.**—Where a contract is voidable, but the party at whose option it is voidable elects to waive his right, and carry out the contract as if it had been valid *ab initio*, he is said to affirm it. Thus, where a contract is voidable for fraudulent misrepresentation, the party defrauded may call on the other party to perform it and make good his representations (*q. v.*) (Poll. Cont. 487.) The affirmation may also be implied (*q. v.*) See RATIFICATION; ADOPTION; RESCISSION.

§ 2. **Judgment.**—An Appellate Court is said to affirm the judgment of a lower court when it agrees with it. See OVER-RULE.

§ 3. **Witness.**—When a person called as a witness in a judicial proceeding either refuses from conscientious motives, or is unable from want of religious belief, to take an oath, he makes a solemn affirmation or declaration that he will speak the truth; if he wilfully and corruptly gives false evidence he is liable to punishment for perjury as if he had taken an oath. Best Ev. 236. See DECLARATION.

AFFIRM, (as applied to a decree). 14 Wend. (N. Y.) 666.

—— (as used in a deposition). South. (N. J.) 298.

—— (in statute authorizing Quakers to). 9 Mass. 108, 111.

AFFIRMANCE.—The confirmation of a voidable act.

AFFIRMANCE, (dismissal of appeal is not). 14 N. Y. 61.

AFFIRMANT.—A person who solemnly affirms, instead of taking the oath.

Affirmanti, non neganti, incumbit probatio: The proof lies upon him who affirms, not upon him who denies.

AFFIRMATION.—A solemn declaration without oath.

AFFIRMATIONS, ON THEIR, (in inquisition). Coxe (N. J.) 260; 1 Halst. (N. J.) 341; 2 *Id.* 361; 4 *Id.* 244; 3 Green (N. J.) 473.

AFFIRMATIVE.—The party who, under the issue joined by the pleadings is obliged first to make proof, is said to hold the affirmative.

AFFIRMATIVE PREGNANT.—An assertion implying a negation.

AFFIRMATIVE WORDS, (in a statute). 7 Barn & C. 12; 9 Dowl. & Ry. 776.

Affirmativum negativum implicat: An affirmation implies a negative.

AFFIRMING, (jurors). Penn. (N. J.) 930.

AFFORCE.—To add, increase, or make stronger. In early times, in case of the disagreement of the jury, other jurors were added to the panel, until twelve were obtained who agreed on a verdict. This was called an *afforcement* of the assize. The term was later applied to measures used to compel an agreement, such as the confinement of the jurors without meat or drink.

AFFOREST.—To convert land into a forest in the legal sense of the word.

AFFRAY.—The fighting of two or more persons in a public place to the terror of the people. If the fight take place in a private place it is not an affray but an *assault*, (*q. v.*) See RIOT; UNLAWFUL ASSEMBLY.

AFFRAY, (defined). 2 Hen. & M. (Va.) 360. — (what amounts to). 13 Ga. 322; 5 Jones (N. C.) L. 9; 5 Strobb. (S. C.) 53; 72 Mo. 662.

—— (what does not amount to). 16 Ala. 65; 13 Ga. 322.

—— (must happen in a public place). 5 Yerg. (Tenn.) 356.

—— (must be by mutual consent). 1 Blackf. (Ind.) 377; 6 Dana (Ky.) 295. *Con'ly*, Overt (Tenn.) 198.

AFFREIGHTMENT.—Apparently from Italian *affrettare*, from low Latin *fretta*, freight (*q. v.*)

A contract of affreightment is a contract with a shipowner to hire his ship, or part of it, for the carriage of goods. Such a contract generally takes the form either of a charter-party or of a bill of lading. Maud. & P. Mer. Sh. 227; Smith Merc. L. 295, (*q. v.*) See FREIGHT.

AFORESAID.—Before said or recited. When in any writing a person has been once described, or a place or thing particularly referred to by description, any reference may be afterwards made by simply giving the name and adding the term "aforesaid."

AFORESAID, (distinguished from "same"). 3 Wils. 339, 340.

—— (as explanatory of subject matter before expressed). Cowp. 684.

—— (in a deed). Cro. Jac. 564.

—— (in a statute). Wilberf. Stat. L. 188.

—— (in a will). 2 Barn. & C. 680.

—— (in pleading). 1 Cro. 97, 101, 184, 311, 324, 401; Cro. Jac. 192, 564; Dougl. 97; Ld. Raym. 192, 256, 405, 886, 1094, 1179, 1304.

—— (in criminal pleading). 1 Chit. Cr. L. 173, 174, 194, 195.

AFORETHOUGHT.—Prepense; premeditated. (7 N. Y. 393.) In criminal law the fact that the accused has entertained the thought of committing the offence renders him criminal in a greater degree than where the crime is committed without premeditation. See MALICE AFORETHOUGHT.

AFTER, (in a statute fixing a time "after" an event). 10 Barb. (N. Y.) 117; 47 Me. 238; 2 Den. (N. Y.) 164; 2 Hill (N. Y.) 355.

—— (in a will). 9 Cush. (Mass.) 122, 128; 5 Gray (Mass.) 341, 353; 11 Pick. (Mass.) 371, 378.

—— (becoming of age). 5 Halst. (N. J.) 137.

AFTER-BORN CHILDREN, (in a will). 8 Com. Dig. 472; 11 Ves. 238.

AFTER CONVICTION, (in statute authorizing pardons). 22 Am. Rep. 675; 76 N. C. 231.

AFTER EXAMINING ALL THE BUSINESS COMMITTED TO ME, (in award). 8 Mass. 399.

AFTER HIM, (in a will). 1 Meriv. 21; 19 Ves. 548.

AFTER ISSUE JOINED, (in abatement act). 1 Zab. (N. J.) 550.

AFTER PAYMENT OF MY DEBTS, (in a will). 2 Johns. (N. Y.) Ch. 214; 6 Mass. 155; 9 Pet. (U. S.) 461; 2 Bos. & P. 251; 2 Bro. C. C. 257; 8 Com. Dig. 450; Cro. Eliz. 330; 4 East 499; 5 Id. 98; 3 Mau. & S. 516; 3 P. Wms. 359; 5 T. R. 558; 6 Id. 175; 8 Id. 1; 1 Vern. 45; 1 Ves. 440; 3 Id. 739; 2 Ves. Sr. 271.

AFTER TEN DAYS' NOTICE GIVEN, (trial to be had, in statute). 2 Harr. (N. J.) 338.

AFTER THE DEATH OF A., (bequest to B.) 4 Mass. 135; 7 Id. 384; 1 Serg. & R. (Pa.) 154; 5 Barn. & Ald. 64; 1 Bro. C. C. 181, 298, 386; 6 Co. 17 b; 1 Eden 242; 2 Mad. Ch. 15; 1 Meriv. 414; 9 Ves. 6, 507; 16 Id. 316; 19 Id. 612; Willes 353.

AFTER THE LOSS SHALL OCCUR, (in fire policy). 19 Alb. L. J. 477, 478; 61 How. (N. Y.) Pr. 146.

AFTER THE PASSING OF THIS ACT, (in a statute). 4 Q. B. D. 230.

AFTERMATH.—A second crop of grass mown in the same season; also the right to take such second crop. See 1 Chit. Gen. Pr. 181.

AFTERNOON, (justice adjourning cause to). 7 Halst. (N. J.) 108.

AFTERNOON DIVINE SERVICE, (popular sense). Wilberf. Stat. L. 122.

AFTERWARD, (in mechanics' lien act). 11 C. E. Gr. (N. J.) 396.

AFTERWARDS, TO WIT, (in pleading). 2 Mass. 53; 3 Burr. 1729; 1 Chit. Cr. L. 174, 175; Cro. Eliz. 368; Cro. Jac. 96, 154, 428, 662; 5 T. R. 616.

AGAINST THE FORM OF THE STATUTE.—A technical phrase employed in the conclusion of an indictment for a statutory offence. The Latin phrase is *contra formam statuti*.

AGAINST THE WILL.—A technical phrase used in indictments for robbery from the person.

AGAINST HER WILL, (to sustain rape). 105 Mass. 377.

AGAINST THE FORM OF THE STATUTE, (in indictment). South. (N. J.) 50.

AGAINST THE LAW IN SUCH CASE PROVIDED, (in an information). 5 Pick. (Mass.) 42, 44; 11 Mass. 279.

AGAINST THE PEACE, (in criminal pleading). Ld. Raym. 581.

AGARDER.—To award, adjudge or determine; to sentence, or condemn.

AGE.—That time of life at which some power or capacity becomes vested, or some function may be exercised, which before was lacking by reason of want of years. Age is of importance in law in many ways.

§ 1. **Civil law.**—Thus, in private or civil law, an infant is subject to various disabilities imposed for his protection. (See INFANT; MINOR.) A male of fourteen, and a female of twelve, may contract a binding marriage, if the necessary consents and other requisites are present. (Macq. Husb. & W. 11.) In the United States, the age at which various acts may be lawfully done, is for the most part regu-

lated by the statute law of the several States.

§ 2. **In criminal law** a child under the age of seven years is incapable of committing a crime, and no act done by a child between seven and fourteen is a crime unless it be shown affirmatively that it had sufficient capacity to know that the act was wrong. Steph. Cr. Dig. 15.

§ 3. **Full age.**—In the old books, "age" is commonly used to signify "full age;" that is, the age of twenty-one years. Litt. § 259. See NONAGE.

AGE, OF FULL, (when infant becomes). 1 Bl. Com. 463; 1 Chit. Gen. Pr. 766; 1 Salk. 44; 1 Sid. 162; 5 Halst. (N. J.) 137.

AGE PRAYER, or PRIER.—A statement or suggestion formerly made in a real action to which an infant was a party, of the fact of his nonage, with a request that the proceedings be stayed until he should come of age. It is no longer in use.

AGENCY—AGENT.—LATIN: *agere*, to act.

§ 1. An agent is a person who acts on behalf of another person (the principal). The status of an agent, or the relation between him and his principal, is called agency. (See PRINCIPAL AND AGENT.) The general rule is, that whatever a person can do *in his own right* he may appoint an agent to do for him; but an agent, executor, trustee, &c., cannot himself delegate his office, because the power which he possesses is not in his own right. Smith Merc. L. 109. See DELEGATUS NON POTEST DELEGARE; MINISTERIAL; SUBSTITUTION.

§ 2. **As regards third persons**, agency is merely a mode by which a person can do acts through the medium of another person; an act done by an agent within the scope of his authority binds the principal in the same manner as if the principal himself had done it; thus, if I authorize A. to buy goods for me, and A. does so, I am liable to pay for them.

§ 3. **Gratuitous.**—As regards the principal and the agent *inter se*, agents are of two kinds—gratuitous and remunerated. In the case of a gratuitous agency, the principal cannot compel the agent to enter on the agency, that is, to act as his agent, unless the contract is under seal; but a gratuitous agent who acts as such is liable for gross negligence. (Compare

BAILMENT.) A gratuitous agent when formally appointed is commonly called an attorney (*q. v.*)

§ 4. **Remunerated.**—Where the agent is entitled to be paid for his services, the agency consists of a contract by the agent to perform the services, and by the principal to pay him for them. On the other hand, the principal is entitled to demand an account from his agent.

§ 5. **Mercantile.**—Agents employed for the sale of goods or merchandise are called mercantile agents, and are of two principal classes—brokers and factors (*q. v.*); a factor is sometimes called a commission agent, or commission merchant, (Russ. Merc. Ag. 1) but in practice the latter terms seem to be frequently used to denote an agent who purchases goods for his principal, while "factor" generally means an agent for sale. A commission agent stands in the relation of vendor (as well as agent) to his principal, because the persons from whom he buys the goods sell to him and not to his principal. L. R. 5 H. L. 395.

§ 6. **General and special.**—As regards the extent of the agent's authority (*q. v.*) he is either general or special: a general agent is one who is empowered to act for his principal in all business of a particular kind (*e. g.* to conduct a business or branch of a business, or purchase goods of a particular kind from time to time) or one who, though only appointed by his principal to do a particular act, is by occupation an agent, such as a banker or horse-dealer. A special agent is one who is authorized to do a particular act, (*e. g.* to buy a horse, execute a deed, or the like, Smith Merc. L. 128; Chit. Cont. 193; Russ. Merc. Ag. 61), and whose ordinary occupation is not to do such acts. In the case of a general agent, the principal is bound by all acts done by him within the scope of his ordinary employment, whether such acts were warranted by his private instructions or not, while in the case of a special agent the principal is only bound if the agent acts according to his particular commission or authority. Russ. 61. See DEL CREDERE; POWER OF ATTORNEY; AUTHORITY; RATIFICATION; ULTRA VIRES.

§ 7. **In criminal law**, where one person with criminal intention causes another

to do without criminal intention an act which would be a crime on his part if it were done with criminal intention, then the former is guilty of the crime committed, and the latter is the innocent agent. Russ. Cr. 160; Steph. Cr. Dig. 22. As to frauds by agents, *see* FRAUD.

§ 8. **House of Lords and Privy Council.**—In the practice of the House of Lords and Privy Council, in appeals, solicitors and other persons admitted to practice in those courts in a similar capacity to that of solicitors in ordinary courts, are technically called "agents." Macph. P. C. Pr. App. 65.

AGENCY, DEED OF.—A revocable and voluntary trust for payment of debts.

AGENFRIDA.—The true lord or owner of anything.

AGENT AND PATIENT.—When the same person is the doer of a thing and the party to whom it is done.

AGENT, (defined). 5 Den. (N. Y.) 76; 1 Ct. of Cl. 383.

—— (general and particular, distinguished). 18 Johns. (N. Y.) 366; 102 Mass. 221; 14 N. Y. 418.

—— (auctioneer is). 2 Taunt 38.

—— (contract in name of). South. (N. J.) 223; 3 Halst. (N. J.) 186; 1 Harr. (N. J.) 245; 10 Wend. (N. Y.) 271.

—— (how far witness for vendee). 4 Halst. (N. J.) 215.

—— (includes clerks or servants). 5 Den. (N. Y.) 76.

—— (indorsement of bill of exchange as). 120 Mass. 92.

—— (powers of special). 13 Wend. (N. Y.) 520.

—— (promissory note made to). 2 Greenl. (Me.) 305.

—— (suit must be against principal). Penn. (N. J.) 682; South. (N. J.) 828.

—— (in a statute). 11 Ala. 222; 9 Gray (Mass.) 5; 3 Humph. (Tenn.) 483.

—— (under pension laws). 7 Biss. (U.S.) 56.

—— (under statute, to effect insurance). 102 Mass. 221.

AGENT, COMMERCIAL, (in law of nations). Cas. Temp. Talb. 281; 4 Burr. 2016.

AGENT, DULY AUTHORIZED, (in statute of frauds). 1 Younge & J. 387.

AGENT OF CORPORATION, (how proved to be such). 15 Wend. (N. Y.) 256.

AGENT OF BANK, (how may bind principal). 22 Wend. (N. Y.) 348.

AGENT OF MANUFACTURING Co., (I promise to pay A. B.). 8 Mass. 103.

AGENT TO LEASE, (may be authorized by parol). 1 Sch. & L. 22, 31.

AGENT THEREUNTO, &c., (in statute of frauds). 5 Barn. & Ald. 333; 5 Barn. & C. 436; 6 Id. 117; 4 Bing. 722; 2 Campb. 203, 337; 1 Dowl. & Ry. 32; 8 Id. 59; 9 Id. 148; 7 East 558; 1 Esp. 106; 4 Id. 114; 2 H. Bl. 63; 1 Mad. Ch. 376; 4 Wheat. (U. S.) 96.

AGENTS, (joint, notice to either, is notice to principal). 2 Hill (N. Y.) 451.

Agentes et consentientes, pari pœna plectentur: Acting and consenting parties are liable to the same punishment.

AGER.—A tract of land enclosed by boundaries. The term was used in the civil law in the sense of the word "acre," in old English law.

AGGRAVATION.—LATIN: *aggravare*, to make heavy.

In common law pleading, matter of aggravation is matter which only tends to increase the amount of damages, and does not itself constitute a right of action. *See* ASSAULT.

AGGREGATE.—LATIN: *aggregare*, to collect in flocks.

A number of persons or things united into one body. *See* CORPORATION.

AGGREGATE CORPORATION, (defined). 4 Wheat. (U. S.) 667.

AGGREGATIO MENTIIUM.—The meeting of minds. The moment when a contract is completely entered into.

AGGRESSOR.—He who begins a dispute or quarrel, either by threats or blows.

AGGRIEVED, (in a statute). 11 R. I. 430; 16 East 194; 1 Stockt. (N. J.) 205; 3 Green (N. J.) 86.

—— (in statute allowing appeals). 8 Cal. 306; 17 Id. 250; 12 Johns. (N. Y.) 511; 3 Daly (N. Y.) 191; 3 Barn. & Ad. 938; 39 How. (N. Y.) Pr. 176; 5 La. Ann. 140; 5 Md. 186; 8 Id. 297; 34 Me. 141; 53 Me. 555; 13 East 51; 112 Mass. 282; 10 C. E. Gr. (N. J.) 503, 506; 6 Paige (N. Y.) 273; 4 Rawle (Pa.) 271; 23 Mich. 410; 64 N. C. 110; 3 Hen. & M. (Va.) 255, 256; 27 Wis. 667.

—— (in copyright act). 4 Q. B. D. 90.

—— (in dower act). 64 N. C. 110.

—— (by nuisance, who is). 9 Wend. (N. Y.) 571.

AGILD.—Free from penalties

AGILER.—An observer or informer.

AGILLARIUS.—A keeper of cattle in a common field.

AGIO.—A commercial term used to distinguish the value of bank notes and other paper currency, from that of the coin of the country. —*McCull. Com. Dict.*

AGIST.—To take in and feed strangers' cattle in the Royal Forest, and to collect the money due for it.

AGISTATIO ANIMALIUM IN FORESTA.—The drift or numbering of cattle in the forest.

AGISTERS, or GIST TAKERS.—Officers appointed to look after cattle, &c. See *Wms. Comm.* 232.

AGISTMENT.—Apparently from Norman-French *a. to. and giste*, a feeding or resting place for animals; from Latin *jacere*, to lie. (*Littre. Dict. s. v. Gite*; *Spelm. Gl. s. v.*) The word is also used to denote the burdening of lands with a tribute to keep out the sea, thus *terre agistate*, are lands whose owners must maintain the sea banks or dikes.—*Holth. Law Dict.*

Agistment is where a person takes in and feeds or depastures horses, cattle or similar animals upon his land for reward. An agister is therefore a bailee for reward, and is liable for the cattle if he uses less than ordinary diligence (*e. g.* if he leaves a gate open, or if he places a horse in a field where it is likely to be attacked by a bull). An agister has no lien on the animals which he agists, unless there is an express agreement to that effect. *Chit. Cont.* 435; 1 *Sm. Lead. Cas.* 222; 5 *Mees. & W.* 342; 1 *Q. B. D.* 79.

AGNATES—AGNATI.—Relatives on the paternal side. In the Roman law the *agnati* ranked next before the *cognati*, and next after the *sui hæredes*.—*Abbott.*

AGNATION.—Kinship by the father's side.

AGNOMEN.—An additional name derived from some notable personal circumstance, as the name *Africanus*, borne by the two *Scipios* on account of their victories over the *Carthaginians*.

AGNOMINATION.—A sur-name.

AGRARIAN.—*LATIN: agrarius*, from *ager*, a field.

Relating to land. Agrarian laws, are those which provide for the distribution of public lands, and the regulation of their possession by those who hold them; also, laws which tend to increase the number of landholders by cutting up or subdividing large estates.

AGRARIUM.—A tax upon, or tribute payable out of land.

AGREE, (synonymous with "promise" or "engage"). 17 *Mass.* 122; 1 *Den. (N. Y.)* 226.

— (in a verdict). 14 *Wis.* 423.

— (in a contract). 1 *Den. (N. Y.)* 226; 44 *N. Y.* 609; 4 *R. I.* 14.

— (in narr. in *assumpsit*). 3 *Mass.* 16; 9 *Id.* 191.

— (to take possession, in a lease). 1 *T. R.* 735.

AGREE, I, (in an article). 1 *Carr. & P.* 189; 1 *Cro.* 156, 486; 1 *Esp.* 189; 24 *Wend. (N. Y.)* 285.

AGREE IN NATURE AND QUALITY, (appurtenances). 8 *Barn. & C.* 145.

AGREE TO LET, (in an instrument). 103 *Mass.* 371; 14 *Ves.* 155; 12 *East* 169.

AGREE TO RENT OR TO LEASE, (in a writing). 102 *Mass.* 394.

AGREE TO SELL, (in an agreement). 104 *Mass.* 263.

— (what amounts to). 3 *Johns. (N. Y.)* 388.

AGREE TO SURRENDER, (in article). 1 *T. R.* 441; *Ld. Raym.* 1145; 3 *Mod.* 298; *Str.* 1201.

AGREE TO TAKE, (in a lease). 8 *Bing.* 178.

AGREEABLE TO CERTAIN COURSES, (sale made). 4 *J. J. Marsh. (Ky.)* 634.

AGREEABLE TO IT, (in order directing judgment on report). 7 *Mass.* 412.

AGREED, (in an article). 6 *J. B. Moore* 199, 202 *n.*

— (in a covenant). 1 *Lev.* 274.

— (in an instrument). 3 *Dowl. & Ry* 668; 5 *Hill (N. Y.)* 256.

— (in a declaration). 6 *Barn. & C.* 268

— (in declaration in *assumpsit*). 72 *Ill* 172; 3 *Mass.* 160.

— (in a lease). 1 *T. R.* 735.

— (in pleading). 7 *Wheel. Am. C. L.* 339.

AGREED TO LET, (in a writing). 6 *Bing.* 206; 7 *Id.* 590; 8 *Id.* 178; 5 *T. R.* 163.

AGREED AND DECLARED, (in marriage settlement). 19 *Ves.* 638.

AGREED, IT IS HEREBY, (in agreement between partners). 1 *Bing.* 433.

AGREEMENT.—*FRENCH: agrement; LATIN: agreementum.*

§ 1. **In general.**—Agreement, in its widest sense, is where two or more persons concur in expressing a common intention with the view of altering their rights and duties. (*See* 3 *Sav. Syst.* 309; *Poll. Cont.* 2.) Agreement is "aggregatio mentium, or the union of two or more minds in a thing done or to be done." (1 *Com. Dig.* 311; 5 *East* 10; 2 *Sm. Lead. Cas.* 241.) An agreement of this kind has no legal effect when existing by itself, but is an essential part of every true contract, gift, payment, conveyance and compromise, and of every voluntary variation or discharge of a contract or other obligation. Thus, in a formal deed of conveyance, the introductory recital always refers to the agreement in pursuance of which the conveyance is executed, meaning not the preliminary contract of sale, but the mutual assent of the parties at the time the deed is executed. (*See* an instance of an agreement operating as a conveyance, in *Co. Litt.* 10a.) When analyzed, the essential marks of an agreement are these: there must be

at least two persons; they must definitely intend the same thing; they must communicate this intention to one another; and the object of their intention must be such as will, when carried out, alter their legal positions, *e. g.* by producing the transfer of property, or the creation or extinction of a right. The communication of intention may be formal or informal, simple or complicated, but it may always be reduced to the elements of a proposal made by one party and accepted by the other; so that until a proposal is absolutely accepted there is no agreement. For an elaborate examination of the whole subject, *see* Sav. Syst. § 140; Chit. Cont. 8 *et seq.*; 3 App. Cas. 1124. *See* PROMISE.

§ 2. "**Contract**" distinguished.—In its narrower and popular sense "agreement" has the same meaning as "contract," especially "contract not under seal;" thus, an agreement for a lease is a contract to grant a lease. "Agreement" and "contract," however, are sometimes opposed to one another, "contract" generally denoting an arrangement complete in itself, while "agreement" may denote a part of an arrangement. Thus, in a sale of a house, "contract of sale" denotes the whole arrangement between the vendor and purchaser, while each clause binding either of the parties to do a specific thing is an agreement, *e. g.* a clause binding the vendor to put the property in repair before the sale is completed. *See* 5 East 10; 2 Sm. Lead. Cas. 241. *See* MUTUALITY; CONTRACT.

§ 3. The various kinds of agreements.—Agreements are called **conditional** when they are to have full effect only on the happening of certain events, or the existence of a certain contingent state of affairs; **executed**, when nothing further remains to be done by the parties, as in the case of a sale accompanied by delivery and payment of the price; **executory**, when they are to be performed in the future, or are merely preliminary to some more formal and solemn transaction; **express**, when the terms and conditions are openly uttered and avowed by the parties at the time of making; **implied** when the terms are not so expressed, but the law supposes or implies the making from the facts and

circumstances of the case. Agreements are also styled **simple** and **express**, according to the absence or presence of a seal, but these words more properly apply to "contract" (*q. v.*) *See also* ASSENT; CONSIDERATION; RESCISSION.

AGREEMENT, (defined). 24 Wend. (N. Y.) 285.

— (synonymous with "understanding"). 47 Wis. 501.

— (what memorandum is not). 3 Barn. & Ald. 326.

— (book account, no evidence of). 1 Halst. (N. J.) 96.

— (by insolvent, to procure discharge). 4 Barn. & Ald. 691; 8 Barn. & C. 421; 2 Bing. 441; 3 Car. & P. 379; 3 Dowl. & Ry. 567; 4 T. R. 166; 4 Halst. (N. J.) 352; 1 Cai. (N. Y.) 175; 3 *Id.* 213; 1 Hall (N. Y.) 635.

— (by surety upon promissory note). 5 Mass. 358.

— (for sale of lands). 6 Barn. & C. 665; 9 Dowl. & Ry. 678; 5 Halst. (N. J.) 158.

— (to purchase, how enforced). 2 Halst. (N. J.) 121; 21 Wend. (N. Y.) 230.

— (under stamp act). 5 Esp. 89.

— (under statute of frauds). 4 Barn. & Ald. 595, 600, 603; 3 Bing. 107; 6 *Id.* 201, 506; 3 Brod. & B. 20; 1 Campb. 242; 3 Carr. & P. 289; 2 Chit. Pl. 254 *n.*; 5 East 10, 19, 20 *d.*; 6 *Id.* 307; 9 *Id.* 348; Fell Guar. 337; 7 J. B. Moore 252; 1 Mad. Ch. 374, 375; 18 Ves. 175; 1 Ves. & B. 341; 5 Cranch (U. S.) 142; 1 Pet. (U. S.) 476, 650; 4 Wheat. (U. S.) 91; 34 Ala. 129; 6 Conn. 81; 12 Mass. 297; 17 *Id.* 122; 9 Allen (Mass.) 8, 11, 16; Penn. (N. J.) 619; South. (N. J.) 570; 3 Johns. (N. Y.) 210, 215; 8 *Id.* 37; 14 *Id.* 484; 2 Den (N. Y.) 87; 4 *Id.* 275; 24 Wend. (N. Y.) 35.

— (under statute of limitations). 15 Ind. 280.

— (used for "warrant," or "promise," in a deposition). 8 Allen (Mass.) 577, 579.

— (with another State, etc., in U. S. Constitution). 14 Pet. (U. S.) 571.

AGREEMENT OR SUBMISSION TO ARBITRATION, (what is). L. R. 6 Q. B. 332.

AGREEMENT FOR INSURANCE.

—A brief agreement entered into between the insurer and insured, preliminary to the filling up and delivery of a policy. *See* INSURANCE.

AGREEMENT TO CONVEY, (distinguished from conveyance). 5 Wend. (N. Y.) 26.

— (held not sufficient to divest legal estate). 4 Yeates (Pa.) 295.

— (writing construed as). 1 Yeates (Pa.) 398.

AGREEMENT TO LET, (distinguished from lease). 5 Johns. (N. Y.) 74.

AGRI.—Arable lands in common fields.

AGRI LIMITATI.—Lands belonging to the State by right of conquest, and granted or sold in plots.

AGRICULTURE, (distinguished from "horticulture"). 7 Heisk. (Tenn.) 510.
 — (under exemption laws). 7 Heisk. (Tenn.) 510.

AGRICULTURAL EMPLOYMENT, (work in a grist mill not). 62 Me. 526.

AGRICULTURAL HOLDINGS ACT, 1875 (38 and 39 Vict. c. 92).—An act designed to give agricultural tenants compensation for so much of the value of improvements effected by them on their holdings as remains unexhausted at the determination of the tenancy, and so far to reverse the general rule of law that what is in or attached to the soil belongs to the landlord. (Sect. 5; Cooke's Agric. Holdings Act, 27.) For this purpose the improvements entitling the tenant to compensation are divided into three classes, according to the degree of their permanence, and provisions are made for calculating the unexhausted value at the time when the tenancy comes to an end. (*Id.* 28.) The act is practically permissive only, as any landlord and tenant may contract themselves out of its provisions; it is believed not to have hitherto produced much effect, except that section which entitles a tenant from year to year of agricultural land to a year's notice to quit.

AGRICULTURAL MEASURE, (discussed). 1 Chit. Gen. Pr. 181.

AGRICULTURAL PURPOSE, (in contract to use land for). 3 Wend. (N. Y.) 107

AID.—FRENCH: *aide*.

To assist, supplement, or exonerate. As to aiding and abetting in the commission of a crime, *see* ABET; ACCESSORY; ACCOMPLICE; PRINCIPAL. As to writs in aid, *see* WRIT.

§ 1. **Execution of power.**—Where a power of appointment is imperfectly executed in point of form (as where it is executed by will instead of by deed, as directed by the instrument creating it), a court of equity can compel the person having the legal interest to transfer it in the manner directed by the appointment. This is termed aiding the defective execution. 2 P. Wms. 489; White & T. Lead. Cas. 207.

§ 2. **Defects in pleading, &c.**—In procedure, errors or omissions in pleading are said to be aided when they are cured or made of no effect by some subsequent proceeding. Thus, under the old common law practice, certain defects in point of form were aided by verdict, that is, the opposite party could not take objection to them after verdict, though for defects in point of substance he could (as a general rule) move in arrest of judgment, unless

it appeared from the nature of the issue and the verdict that the same evidence had been given as would have been given if the defect had not existed. (1 Sm. Lead. Cas. at p. 144; 1 Wms. Saund. 260; Archb. Pr. 479. *See* ARREST OF JUDGMENT.) In England, the new practice has abolished the doctrine of aider by verdict so far as civil actions are concerned, but it still applies to criminal pleading. Archb. Crim. Pl. 132; L. R. 8 Q. B. p. 105. *See* JEOFAIL.

§ 3. **Feudal.**—Formerly every tenant in chivalry was liable to make payments called aids (1) to ransom his lord's person if taken prisoner; (2) to make the lord's eldest son a knight; and (3) to provide a marriage portion for the lord's eldest daughter; and every tenant in socage was liable to the two latter aids. (Co. Litt. 76 a, 91 a.) Aids were abolished by stat. 12 Car. 2, c. 24; but parliamentary taxes for extraordinary purposes (including the land-tax before it became permanent) were called aids down to the reign of William III.

AID, (as used in a statute). 127 Mass. 15.

AID AND ABET, (though not present). 5 Mich. 71.

AID AND COMFORT, (in a statute). 7 Otto (U. S.) 62.

— (in treason). 2 Wheel. Crim. Cas. XXVII. 477.

AID OR ASSISTANCE BY COMMAND OF AN OFFICER, (in a statute). 5 Wend. (N. Y.) 237.

AIDING, (defined). 2 Inst. 182.

— (in a verdict). 4 Burr. 2075, 2082.

— (in the commission of crime). *Ld.* Raym. 844.

AIDING AND ABETTING, (in commission of crime). 3 Mass. 257; 9 Pick. (Mass.) 513.

AIDING AND ASSISTING, (in the commission of crime). *Ld.* Raym. 843; 7 Mod. 130; Fost. 361-2.

AIDING, ASSISTING AND ABETTING, (in the commission of a crime). 1 Chit. Cr. L. 257-8.

AID-PRAYER, or AIDE-PRIER.—A proceeding by which one sued in respect of land in which he had a limited interest, (*e. g.* a tenant for life, by the curtesy, or for years), sought a stay of the action and the aid of his lord, or of the reversioner, or some other person interested in the land.

AIDER BY VERDICT.—*See* AID, § 2.

AIDS.—Originally were benevolences granted by the tenant to his lord in times of danger or distress; later on they were demanded as a matter of right, and were of three kinds. *See* AID, § 3.

AIEL, AIEUL, or AYLE.—A writ which lay for the heir to recover lands of which his grandfather died seized in fee simple, against one who abated the land, or entered and disposed the heir on the day of his grandfather's death.

AIR.—Rights in respect of air are of two kinds—natural and acquired.

§ 1. **Natural rights.**—Every owner of land has the right to prevent his neighbors from polluting the air coming to his land, and the infraction of this natural right is a nuisance. But the right to pollute air may be acquired by prescription, and such a right is an easement. Gale Easem. 335.

§ 2. **Acquired rights.**—It seems that by prescription or grant an owner of land may acquire the right to prevent his neighbors from obstructing the lateral access of air to his tenement. The existence of this easement is, however, not free from doubt. See 9 Rep. 58 b, where the court said that for stopping wholesome air an action lies, and *a fortiori* for infecting and corrupting the air; but this seems put on the ground of property or natural right rather than of easement. In L. R. 2 Eq. 238, an interference with the access of air was restrained on the ground of its being a nuisance. See NATURAL RIGHTS; EASEMENT.

AJUTAGE, (to draw water from a canal). 2 Whart. (Pa.) 477.

AKIN, (means next of kin). 7 Mod. 140.

ALBA FIRMA.—White rent; rent payable in silver, as distinguished from black rents, *reditus nigri*, which were payable in corn, work, or the like.

ALBANAGIUM.—In old French law, the state of alienage; of being a foreigner or alien.

ALBANUS.—Same as *ADVENA* (*q. v.*)

ALBUM BREVE.—A blank writ.

ALCALDE, ALCADÉ, or ALCALDE.—A Spanish judicial officer, with powers similar to those of a justice of the peace. In early times many conveyances and muniments of title, in those parts of the United States which were derived from Spain, were authenticated before alcaldes.

ALDERMEN.—The legislative body of a city. Sometimes there are two separate bodies composing the city council, in which case the aldermen share the legis-

lative power with the other body. Aldermen have also other powers, varying under different local laws; but they generally exercise (singly) the magistrate's functions in addition to their legislative powers.*

ALDERMAN, (defined). 4 Hill (N. Y.) 384, 387, 409; 25 Wend. (N. Y.) 50.

ALEATORY CONTRACT.—An agreement, the effects of which, with respect both to the advantages and losses, whether to all parties, or to some of them, depend on an uncertain event.

ALEATORY CONTRACTS, (risks not excepted assumed by parties). 8 La. Ann. 488.

ALER A DIEM, or ALER SANS JOUR.—To go without day. The final dismissal of a case, giving the defendant leave to depart without fixing any day for his further appearance.

ALFET.—A vessel to contain the hot water in which an offender's arm was inserted as far as the elbow, in the ordeal by water.—*Cowel*.

ALIA ENORMIA.—Other wrongs. The name given to a general allegation of injuries caused by the defendant with which the plaintiff in an action of trespass under the common law practice concluded his declaration. It is used in indictments for assault, and entitles the prosecutor to give in evidence circumstances of aggravation. Archb. Cr. Pl. 694.

ALIA ENORMIA, (in pleading). 1 Ala. 52; 8 Wheel. Am. C. L. 207.

ALIAMENTA.—A liberty of passage; open way; water-course, &c., for the tenant's accommodation.

• **ALIAS.**—Otherwise. An alias writ is one which is issued when a former writ has not produced its effect; thus, if *nulla bona* is returned to a writ of *feri facias* (*q. v.*), an alias *fi. fa.* may be sued out. (Archb. Pr. 585.) The writ is so-called from the words "as we have formerly commanded you," (*sicut alias præcepimus*) being inserted after the usual commencement, "We command you." 3 Bl. Com. 283. See **PLURIES**; **WRIT**.

ALIAS, (in an indictment). 37 N. Y. 245.

ALIAS DICTUS.—Otherwise called. When a person who goes by several names

* In England, aldermen are members of municipal corporations. The municipal corporations act, 1835, provides that in every borough to which it applies there shall be elected a mayor, and a certain number of fit persons to be called the aldermen, and a certain number of

councillors, and the mayor, aldermen and councillors form the council or administrative body of the corporation. The act regulates their qualification and the mode of their election. Grant Corp. 355, 415.

is indicted, he is described in the indictment as "A. B., otherwise C. D." &c.; formerly, when pleadings, &c., were in Latin, this was expressed *alias dictus* ("otherwise called") (Cro. Eliz. 249; Archb. Cr. Pl. 39), and hence such a person is said to go by several aliases or false names.

ALIAS DICTUS, (history and use of). 1 Saund. 14 n. (1).

——— (in a writ). 1 Dyer 50b.
——— (in pleading). 1 Campb. 479;
1 Chit. Cr. L. 203; 4 Com. Dig. 663, 667; 1
Dowl. & Ry. 43; Dyer 279 a.

ALIAS EXECUTION, (defined). 17 Conn. 142.
——— (when may issue). South. (N. J.) 320.

ALIBI.—Elsewhere; in another place. A prisoner or accused person is said to set up an alibi when he alleges that at the time when the offence with which he is charged was committed he was "elsewhere," that is, in a different place from that in which it was committed. If proved it is of course a complete answer to the charge (Best Ev. 460), and is consequently a favorite defence (*Id.* 821); but owing to the temptation which it offers to subornation of perjury, it is usually looked upon with suspicion.

ALIEN.—**NORMAN-FRENCH**: *alien*, apparently from Latin, *alienigena*, "one born in a strange country, under the obedience of a strange prince or country." Co. Litt. 128 b; Bracton 427 b.

One born in a foreign country, or out of the jurisdiction of the United States, and who has not been naturalized under the constitution and laws. But children of ambassadors and foreign ministers, though born abroad, are citizens; so are, in some cases, foreign-born wives of naturalized citizens.* See **ANTENATUS**.

* In English law, an alien is a person who is not a British subject, as opposed (1) to natural-born subjects (as to these, see **ALLEGIANCE**); (2) to aliens who have become British subjects by naturalization (naturalized aliens); and (3) to denizens. (See Co. Litt. 129 a.) Aliens are either aliens by birth (*aliens nées*), or aliens by election. The former class includes all persons born abroad, except the children of ambassadors and persons whose fathers or paternal grandfathers were British subjects. (Stat. 7 Anne, c. 5; 13 Geo. 4, c. 21.) To the class of aliens by election belong those persons who have availed themselves of the provisions of the Naturalization Act, 1870, which allows a British subject to become an alien either by expatriation or, in certain cases, on his making a declaration of alienage. (Natur. Act, 1870, §§ 3, 4.) The act also makes an Englishwoman who marries a foreigner an

ALIEN, (defined). 3 Bradf. (N. Y.) 130, 136; 5 Call (Va.) 160; 6 *Id.* 60; 1 Com. Dig. 552; 2 Cranch (U. S.) 120, 280; 4 *Id.* 321; 5 Day (Conn.) 169; 4 East 502; 2 Halst. (N. J.) 335; 3 Hall L. J. 22, 190; 20 How. (U. S.) 8; 4 Johns. (N. Y.) 75; 20 *Id.* 191, 693; 2 Johns. (N. Y.) Cas. 407; 2 Kent Com. 43; 2 Mass. 179 n, 236, 244 n; 9 *Id.* 456; 16 *Id.* 230; 1 Sandf. (N. Y.) Ch. 583, 668; 1 Wheel. Am. C. L. 294.

——— (as to taking lands by descent). 1 Cranch (U. S.) C. C. 479; 4 Cranch (U. S.) 321; 7 *Id.* 603; 18 How. (U. S.) 235; 7 Johns. (N. Y.) 214; 7 Wheat. (U. S.) 535; 2 Barn. & C. 779; 5 *Id.* 771; 4 Dowl. & Ry. 394; 4 T. R. 308.

——— (children of, as to becoming citizens). 21 Wend. (N. Y.) 391.

——— (dower of widow of). 9 Mass. 363.

——— (enabled to acquire land under statute).

1 Pet. (U. S.) 349.

——— (in a deed). Cro. Jac. 210; Dyer 362 b.

——— (in a statute). 3 Abb. (N. Y.) App. Dec. 92; 33 How. (N. Y.) Pr. 456; 1 Keyes (N. Y.) 133.

——— (may commit treason). 5 Cranch (U. S.) 61.

——— (not to, covenant by lessee). 1 Dyer 45 b.

——— (to B., covenant not to). 1 Dyer 45 a.

——— (without license). Doug. 184; Dyer 334 b.

ALIEN, BARGAIN, SELL, (in a deed). Cro. Jac. 210.

ALIEN ENEMY.—The subject of a nation with which we are at war; usually spoken of one domiciled or residing here, pending the war, or seeking relief of some kind from our courts or the general government.

ALIEN ENEMY, (must owe allegiance to enemy). 1 Bos. & P. 168.

——— (plea of). 2 Gall. (U. S.) 105.

ALIEN FRIEND.—The subject of a nation with which we are at peace.

alien. (*Id.* § 10.) Aliens are also divisible into alien enemies and alien friends (*alien amys*), according as the state of which they are subjects is or is not at war with the United Kingdom. (7 Co. 17; Co. Litt. 129 b.) Alien enemies have in theory no rights or privileges unless by the Queen's special favor. (2 Steph. Com. 409.) And if they bring goods into this country after the declaration of war, it is said that they are liable to be seized. (*Id.* 17.) It is also said that if the plaintiff in an action is or becomes at any time before verdict an alien enemy, the court will stay the proceedings on the application of the defendant. (Archb. Pr. 1112.) Alien friends have certain disabilities; thus, an alien cannot be the owner of a British ship (Natur. Act, 1870, § 14), or hold certain offices, or vote at certain elections. § 2.

ALIENABLE INTEREST, (what is). 3 Barn. & Ad. 59.

ALIENAGE, (plea of). 5 Halst. (N. J.) 328.

ALIENATE—ALIENATION.—To alienate is to pass property from one person to another. (Co. Litt. 118a; 1 Davids. Conv. 70. As to the history of alienation, see Maine's Ancient Law; Lavaleye de la Propriété.) Alienation is either (1) voluntary, when it takes place with the will of the owner, as in the case of a conveyance, gift, &c.; (2) involuntary, where his consent is immaterial, as in the case of descent, intestacy, bankruptcy, forfeiture, &c.; or, (3) partly voluntary and partly involuntary, as in the case of alienation by will (devise and bequest).

Alienatio licet prohibeatur consensu tamen omnium in quorum favorem prohibita est, potest fieri: Though alienation be forbidden, yet, with the consent of all those in whose favor it is forbidden, it may be made.

Alienatio rei praeferitur juri accrescendi: The law favors alienation rather than accumulation. This maxim has always been the policy of our law, even from the time when the right of subinfeudation was first recognized. The statutes of *de donis*, 13 Edw. I. c. 1, and *quia emptores*, 18 Edw. I. c. 1, are examples and proofs of this doctrine.

ALIENATION, (by a corporation). South. 440.
— (in a statute). 35 Ind. 341; South. (N. J.) 440.

— (in policy of insurance). 1 Allen (Mass.) 311; 3 *Id.* 362; 19 Barb. (N. Y.) 442; 3 Den. (N. Y.) 254; 19 Ga. 298; 1 Gray (Mass.) 426; 42 Me. 221; 47 *Id.* 232; 25 N. H. 200; 30 *Id.* 231; 38 *Id.* 232; 10 Ohio St. 347; 12 Me. 44; 9 Vr. (N. J.) 441.

— (of land). 11 Barb. (N. Y.) 624; 35 Ind. 341; 42 Me. 221; 24 N. H. 550; 28 Wis. 84.

— (of lands, by heir before suit brought). 5 Halst. (N. J.) 259.

— (of land, in a statute). 9 Heisk. (Tenn.) 571.

— (of land, in homestead exemption act). 70 Ill. 263.

— (provision against, in a will). 1 Ves. 294.

— (to forfeit estate under a will). Coop. C. C. 261; 1 Cro. 330.

— (to forfeit lease). 4 Co. 119; Dyer 45; 2 T. R. 425.

ALIENI JURIS.—See **SUI JURIS**.

ALIENUS.—Another's; belonging to another; the property of another.

ALIKE, (in a will). 5 Binn. (Pa.) 23; 8 Petersd. Abr. 331; 1 Vern. 353, n.

ALIMENT.—A Scottish law term, signifying: (1) Support; maintenance; a fund for maintenance. (2) To maintain or support.—*Bel.*

ALIMONY.—LATIN: *alimonium*, sustenance.

A gross or periodical sum of money ordered, in a suit for dissolution of marriage or judicial separation, to be paid by the husband to the wife for her support. It is either payable *pendente lite*, that is, during the suit, or is permanent. Browne Div. 157.

ALIMONY, (defined). 36 Ga. 286; 55 Me. 21; 107 Mass. 428, 432; 16 Gray (Mass.) 110; 75 N. C. 70.

— (fixing the amount). 3 Paige (N. Y.) 267.

— (in divorce statutes). 9 N. H. 309; 24 *Id.* 564; 25 N. J. Eq. 548; Sax. (N. J.) 389.

— (pending divorce suit). 2 Hagg. Cons. 199.

— (temporary, how computed). 4 Paige (N. Y.) 643.

— (when may be awarded). 107 Mass. 428.

ALIO INTUITU.—With another intent than that alleged. In English divorce practice a suit is said to be brought *alio intuitu* when it is not brought *bona fide* for the reason or with the object alleged. Browne Div. 131, 339.

Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur: Something is conceded which otherwise would not be, lest an injury remain unredressed.

Aliquid possessionis et (or sed) nihil juris: Somewhat of possession and (or but) nothing of right.

Aliquis non potest esse judex in propria causa: No one can be judge in his own cause.

ALITER.—Otherwise. In old reports it is used to contrast the rules applying to two different cases.

Aliud est celare, aliud tacere: It is one thing to conceal, another to be silent. It is upon this maxim that the rule *caveat emptor* (q. v.) is founded. See **CONCEALMENT**.

Aliud est distinctio, aliud separatio: Distinction is one thing, separation another.

Aliud est possidere, aliud esse in possessione: It is one thing to possess, another to be in possession. One cannot "possess" without having the right of property, but he may be in possession of property belonging to another, e. g. a tenant, borrower, finder of lost goods, &c.

Aliud est vendere, aliud vendenti consentire: To sell is one thing, to consent to a sale another.

ALIUNDE.—From elsewhere. Thus, in construing a document, explanatory evidence which appears from some other source is said to appear *aliunde*.

ALL, (in crimes act). 3 Harr. (N. J.) 311, 324.

— (in a deed—an equivocal expression). 2 Wall. Jr. (U. S.) 97.

— (in a statute). 15 Ga. 518; 18 Pa. St. 388; 11 Ohio St. 252; 27 Ark. 564.

— (I give, in a will). 2 Atk. 113; 6 Barn. & C. 512; 1 Comyn 168; 4 Com. Dig. 154 (g); 1 Lev. 130; Love. Wills 153; 4 Mod. 141; 1 Vern. 340.

ALL ACTIONS OF DEBT GROUNDED ON LENDING OR CONTRACT WITHOUT SPECIALTY, (under statute of limitations). Ang. Lim. 172; 1 Lev. 191; Ld. Raym. 1502; 1 Saund. 37; 1 Sid. 305, 306.

ALL AND EVERY, (in a will). L. R. 7 Ex. 339.

ALL AND EVERY THE CHILD AND CHILDREN, (in a will). L. R. 13 Eq. Cas. 28.

ALL AND EVERY OTHER THE ISSUE OF MY BODY, (in a will). L. R. 7 Ex. 339; 8 Id. 160.

ALL AND SINGULAR, (in assignment). 2 Keen 527.

— (in a will). 2 Mau. & S. 448; 8 Petersd. Abr. 109.

ALL AND WHATSOEVER HE HATH IN THE TENEMENTS, (in a will). 2 Taunt. 198.

ALL BUSINESS, (in a power). 9 Bing. 608; 1 Taunt. 356; 8 Wend. (N. Y.) 498.

ALL CASES, (as used in Criminal Code, § 158). 1 Scam. (Ill.) 172.

ALL CONTAINED IN THE TWO-STORY FRAME BARN, &C., (in fire policy). 25 Minn. 229.

ALL DEBTS DUE AND OWING TO ME AT THE TIME OF MY DEATH, (in a will). 8 Com. Dig. 469; 1 Meriv. 541.

ALL DECEMBER, (agreement to do an act in). 2 Moo. 588.

ALL DEMANDS, (release of). 1 Edw. (N. Y.) Ch. 34; 2 Show. 90; 12 Mod. 460; 2 Id. 281.

ALL EXPENSES OF SALE, (in chattel mortgage). 25 Minn. 135.

ALL FAULTS, (sale of goods with). 118 Mass. 242, 247.

ALL FOURS.—Two decisions or cases which are alike in all material respects, are said to “run upon all fours.”

ALL I AM POSSESSED OF, (in a will). 8 Com. Dig. 469; 5 Ves. 811, 816.

ALL I AM WORTH, (in a will). 1 Bro. Ch. C. 437; 4 Rawle (Pa.) 81; Reeve Dom. Rel. 489; 6 Serg. & R. (Pa.) 456.

ALL I HAVE, (in a will). 6 Barn. & C. 512; Comyn 168.

ALL IN S., (I give, in a will). 1 Bro. Ch. C. 127, 129, n.; 8 Com. Dig. 469.

ALL LEGAL COSTS, (in a suit). 11 Allen (Mass.) 4.

ALL LIABILITIES, (promise to pay). 7 Vr. (N. J.) 141.

ALL MATTERS IN DIFFERENCE, (in submission to arbitration). 9 Barn. & C. 780; 1 Bro. P. C. 528, 530; 8 Co. 98; Comyn 477; 1 Com. Dig. 662; 2 Cro. 447; 8 East 445; 12 Id. 165; 15 Id. 213; 16 Id. 58; 4 Esp. 180; Ld. Raym. 114; 2 T. R. 645; 4 Id. 146, 147; 1 W. Bl. 475; 5 Mass. 337; 2 Green (N. J.) L. 336; 2 Cai. (N. Y.) 327; 12 Johns. (N. Y.) 313; 15 Id. 197; 5 Wend. (N. Y.) 268; 3 Pa. 270; 4 Rawle (Pa.) 299, 432.

ALL MATTERS IN DISPUTE, (in submission to arbitration). 7 Mod. 349; 64 N. C. 429.

ALL MY CLOTHES AND LINEN WHATSOEVER, (in a will). 8 Com. Dig. 468.

ALL MY ESTATE, (in a will). 4 Com. Dig. 154, n. (g); Cowp. 299; 2 Doug. 763; 3 Keb. 245; Ld. Raym. 1325; 1 Mod. 100; 3 Id. 45, 228; 6 Id. 106, 110; Reeve Dom. Rel. 488; 8 T. R. 502; 7 Taunt. 35; 13 Ves. 445; 8 Id. 604; 2 W. Bl. 1301, 1307; 3 Wils. 418; 2 Mac Arth. (U. S.) 70; 1 Har. & M. (Md.) 455; 6 Metc. (Mass.) 325; Penn. (N. J.) 602; 2 Binn. (Pa.) 20; 2 Desaus. (S. C.) 422.

ALL MY ESTATE AND EFFECTS, (in a will). 9 Ves. 137, 142; 4 E. L. & Eq. 133.

ALL MY ESTATE, BOTH REAL AND PERSONAL, (in a will). 12 Johns. (N. Y.) 389.

ALL MY ESTATE IN LAW AND EQUITY, (in a will). 8 Com. Dig. 469; 3 Gratt. (Va.) 518.

ALL MY ESTATE IN OR AT, (in a will). 11 East 49; Reeve Dom. Rel. 488; 6 T. R. 118.

ALL MY ESTATE WHATSOEVER, (in a will). Comyn 337.

ALL MY FREEHOLD PROPERTY, (in a will). 16 East 221.

ALL MY INTEREST, (in a will). Reeve Dom. Rel. 488, 489.

ALL MY JUST DEBTS, (in a will). L. R. 4 H. L. 506.

ALL MY LANDS, (in a will). 1 Wash. (Va.) 96; Cro. Jac. 48, 51; Doug. 323.

— (release of). Dyer 87.

ALL MY LANDS LYING IN, (in a will). 3 Cranch. (U. S.) 131; 4 Com. Dig. 154, n. (g); 2 Doug. 759; 6 T. R. 118; 8 Id. 502; 3 P. Wms. 386.

ALL MY NOTES, (in a will). 2 Dev. (N. C.) Eq. 488, 496.

ALL MY OTHER ESTATE, REAL AND PERSONAL, (in a will). 6 Mod. 106.

ALL MY PERSONAL PROPERTY, (in a will). 3 Ch. D. 309; 9 Mod. 93; 28 Vt. 26, 27, 31.

ALL MY PROPERTY, (in a will). 11 East 518; 14 Id. 370; 4 Md. Ch. 484; 81 N. Y. 356, 358; 6 Barn. & C. 512.

ALL MY PROPERTY IN A. EXCEPT, (in a will). 8 Com. Dig. 468.

ALL MY PROPERTY OF ANY NATURE OR KIND WHATSOEVER, WHICH DEED, PAPERS, AND MOVEABLES WILL SHOW, (in a will). 1 Ired. (N. C.) L. 257.

ALL MY PROPERTY OF EVERY DESCRIPTION, (in a will). 2 Jones (N. C.) Eq. 75.

ALL MY REAL ESTATE, (in a will). 18 Pick. (Mass.) 537; 12 Gray (Mass.) 379; 6 Binn. (Pa.) 94; 2 McCord (S. C.) 66; 4 Barn. & C. 610.

ALL MY REAL PROPERTY, (in a will). 18 Ves. 193; 16 Johns. (N. Y.) 538.

ALL MY REAL AND PERSONAL PROPERTY, (in a will). 13 Wend. (N. Y.) 583; 6 Binn. (Pa.) 94.

ALL MY RIGHT, TITLE AND INTEREST, (in a will). Ld. Raym. 831.

ALL MY TEMPORAL ESTATE, (in a will). 3 P. Wms. 295.

ALL MY WAGON-WAYS, RAILS, STAIRS, AND ALL IMPLEMENTS, UTENSILS, AND THINGS, (in a will). 8 Com. Dig. 469.

ALL OF THEM, (in a bond). 12 Serg. & R. (Pa.) 158.

ALL OR SUCH OF MY CHILDREN, (in a will). 1 Atk. 389.

ALL OFFENCES, (in a pardon). 1 Mod. 102.
 ALL PERSONAL EFFECTS, (in a deed of trust).
 6 Fla. 62.
 ALL PERSONS, (in settlement act). 1 Me. 93;
 11 *Id.* 455.
 ALL PROPERTY SHALL BE TAXED ACCORDING
 TO ITS VALUE, (in State constitution). 13 Am.
 Rep. 143; 43 Cal. 331.
 ALL RENTS AND PROFITS, (in an agreement).
 2 Q. B. D. 189.
 ALL SORTS OF WOOL, (in a statute). 1 Holt.
 N. P. 69.
 ALL THE BUILDINGS THEREON, (in descrip-
 tion in a deed). 4 Mass. 114.
 ALL THE CHILDREN OF A. AND B., (in a will).
 10 Ch. D. 236.
 ALL THE DUTIES, LIABILITIES, &C., (in a stat-
 ute). 120 Mass. 400.

ALL THE ESTATE.—The name given
 in England, to the short clause in a conveyance
 or other assurance which purports to convey "all
 the estate, right, title, interest, claim and de-
 mand" of the grantor, lessor, &c., in the prop-
 erty dealt with. The clause is said to be wholly
 inoperative and unnecessary. Davids. Conv. 93.
See GENERAL WORDS; DEED.

ALL THE ESTATE, (in condition of guardian's
 bond). 13 Vr. (N. J.) 18.

ALL THE ESTATE BOTH REAL AND PERSONAL,
 (in a deed). 3 Gratt. (Va.) 518.

ALL THE ESTATE WHICH I HAVE, (in a will).
 2 Atk. 38.

ALL THE INTEREST, (assignment of). 30
 Miss. 66.

ALL THE PERSONAL PROPERTY, (in bill of
 sale). 21 Minn. 370.

ALL THE PROPERTY, (in a will). 100 Mass.
 222.

ALL THE PROPERTY I POSSESS, (in a deed).
 5 Jones (N. C.) Eq. 332.

ALL THE REMAINDER OF MY BEQUESTS, (in a
 will). 14 Ves. 363.

ALL THE RESIDUE OF MY ESTATE, (in a will).
 12 Mod. 596.

ALL THE REST, (in a will). 8 C. E. Gr. (N.
 J.) 229.

ALL THE REST AND RESIDUE OF MY ESTATE,
 (in a will). 4 Wheel. Am. C. L. 374, *n*; Ld.
 Raym. 1324.

ALL THE REST I HAVE IN THE WORLD, (in a
 will). 4 East 496.

ALL THE REST OF MY ESTATE, (in a will). L.
 R. 5 Eq. Cas. 404.

ALL THAT ESTATE, (in a will). 2 Ves. Sr. 48.

ALL THAT I POSSESS, (in a will). 3 Hawks.
 (N. C.) 74.

ALL THAT MY FARM, (in a deed). 4 Mass. 205.
 — (in a devise). 13 Vr. (N. J.) 581.

ALL THAT MY HOUSE, (in a lease). 1 Cro.
 615.

**Allegans contraria non est audien-
 dus:** One who contradicts himself is not to be
 heard. A rule of evidence relative to the credi-
 bility of a witness. It also applies to contradic-
 tory allegations in pleading.

**Allegans suam turpitudinem non
 est audiendus:** One who alleges his own
 infamy is not to be heard.

**Allegari non debuit quod probatum
 non relevat:** That ought not to be alleged,
 which, if proved, is not relevant.

ALLEGATA ET PROBATA.—Allega-
 tions and proofs. The rule is that the evidence
 must correspond with the allegations in the
 pleadings; the *probata* must agree with and
 support the *allegata*, or there will arise a case
 of *variance* (*q. v.*), for no one is permitted to set
 forth one case in his pleadings and prove a dif-
 ferent one on the trial.

**Allegatio contra factum non est ad-
 mittenda:** An allegation contrary to the deed
 (or fact) is not admissible.

ALLEGATION.—LATIN: *allegatio*.

§ 1. **At common law**, an allegation is
 a statement of fact made in a legal pro-
 ceeding; *e. g.* in an affidavit or pleading.
 Each separate statement of a fact which
 the pleader claims to be able to prove is a
 distinct allegation.

§ 2. **In ecclesiastical causes**, every
 plea after the first is termed an allegation.
 (Phillim. Ecc. L. 1254, 1289.) An allega-
 tion by the defendant, controverting the
 plaintiff's charge, seems to be called a re-
 sponsive allegation, and, if the plaintiff
 rejoins to it, his allegation is called a
 counter allegation, or rejoining allegation.
 When a party objects to the evidence ta-
 ken by the other party, he is said to give
 an exceptive allegation. *Id.* 1256; Rog.
 Ecc. L. 722. *See* PLEA; LIBEL.

ALLEGATION OF FACULTIES.—

The statement made by a wife, seeking alimony
 in the Ecclesiastical Courts, as to the amount of
 her husband's property.

ALLEGIANCE.—NORMAN-FRENCH: *alleg-
 geance* (Britton 170 b), *ligeaunce* (*Id.* 175 a), from *lige*,
 pure, absolute; so that "liege homage" meant uncon-
 ditional homage. (Loysel, Inst. Cout. Gloss.) *Lige* is
 said to be derived from German *ledig*=free, a "ledig-
 man" (*ligus homo*) being a man who was free from
 all obligations to anyone but his lord. (2 Diez. Etym.
 Wortb. 359; *see* 1 Bl. Com. 367.) Originally allegiance
 was applied also in certain cases to the obligation due
 by tenants to their feudal lords. Britton 175 a.

"The tie or *ligamen* which binds the
 subject [or citizen] to the king [or govern-
 ment], in return for that protection which
 the king [or government] affords the sub-
 ject [or citizen.]" (1 Bl. Com. 366.) It
 consists in "a true and faithful obedience
 of the subject due to his sovereign." 7
 Co. 4b.

§ 1. **In English law**, allegiance is said to be
 divided into four kinds: (1) *Natural allegiance*,
 that which is due from all men born within the
 king's dominions immediately upon their birth."
 (2 Bl. Com. 369.) A person born in the British

dominions of alien parents may divest himself of this natural allegiance by making a declaration of alienage. (2) *Acquired allegiance*, that obtained by naturalization or denization. (Co. Litt. 129a; 7 Co. 5b; see the Naturalization Oaths Act, 1870.) (3) *Local allegiance*, that which is due from every alien only so long as he continues within the dominions of the English crown. (7 Co. 5b; 2 Bl. Com. 370.) (4) *Legal allegiance*, so called "because the municipal laws of this realm have prescribed the order and form of it" (7 Co. 5b, 6b); it is created by the oath of allegiance, which has to be taken on various occasions—e. g. by the great officers of the crown on assuming office. (Promissory Oaths Acts, 1868 and 1871.) It does not seem to add anything to the duties of ordinary allegiance. To the class of legal allegiance may also be referred that due from the children and grandchildren born abroad of natural-born British subjects, of which, however, they may divest themselves by a declaration of alienage. (As to the oath of allegiance, see the Naturalization Act, 1870, and the Naturalization Oaths Act, 1870.) Allegiance is also used with the sense of locality, as where a person is said to be born within the allegiance of the crown, meaning within the British dominions. Litt. § 198; Co. Litt. 129b; Calvin's case, 7 Co. 2b.

§ 2. **Renouncing allegiance.**—In early times the obligation of allegiance was regarded as perpetual and could not be renounced, except by express permission of the sovereign, but emigration and colonization have caused the relaxation of this rule, both in England and America, and now subjects of either country may renounce their allegiance and adopt another by naturalization. Eng. Naturalization Act, 1870; U. S. Rev. Stat. § 1999. See EXPATRIATION; NATURALIZATION.

ALLEGIANCE, (defined). 16 Wall. (U. S.) 147; 1 Com. Dig. 566; 1 Wheel. Am. C. L. 312.

— (as applied to Indians). 20 Johns. (N. Y.) 188.

— (in criminal pleading). 1 Chit. Cr. L. 241-2.

— (of aliens domiciled in U. S.) 16 Wall. (U. S.) 147.

— (power to renounce). 2 Kent. Com. 49.

— (to a foreign power). 2 Cranch. (U. S.) 64; 8 Id. 253, 278, 335; 7 Wheat. (U. S.) 284; 2 Johns. (N. Y.) Cas. 407; 1 Bos. & P. 168.

ALLEGIARE.—To defend and clear one's self; to wage one's own law.

ALLEGED, (in award of arbitrators). 6 Mod. 232.

ALLEGING DIMINUTION.—The allegation in an appellate court, of some error in a subordinate part of the record of the court below.

ALLEU, ALEU, or ALIEU.—Same as ALLODIUM (q. v.)

ALLEVIARE.—To pay an accustomed fine or composition.

ALLIANCE.—LATIN: *ad, to, ligare, to bind.*

A union or connection of interests (1) between families, by marriage, in which sense "affinity" expresses the same idea, and (2) between States, by compact, treaty or league. In the latter sense, alliances are *defensive* where one State agrees to defend the other in case of an attack; *offensive*, where two or more States unite for the purpose of attacking or levying war against another nation; and *offensive and defensive*, where both defence and attack are contemplated.

ALLISION.—LATIN: *ad, to, and laedere, to dash against.*

A word sometimes used to designate that species of collision between vessels, where one vessel is run against another, as distinguished from an ordinary collision, *i. e.* the running of two vessels against each other.

ALLOCATION.—An allowance upon an account in the English Exchequer.

ALLOCATIONE FACIENDA.—A writ commanding the lord treasurer and barons of the exchequer, to make to an accountant, an allowance for such moneys as he has lawfully expended in his office.—*Jacob.*

ALLOCATUR.—It is allowed. A word formerly written on a writ or order to denote the approval of the judge who granted it. Under the present practice of the English Common Law Divisions of the High Court, it is a certificate by a master of the result of a taxation of costs. Archb. Pr. 129.

ALLOCATUR, (on writ of certiorari). South. (N. J.) 369, 517; 2 Halst. (N. J.) 38.

ALLOCATUR EXIGENT.—A species of writ anciently issued in outlawry proceedings, on the return of the original writ of exigent. 1 Tidd Pr. 128.

ALLOCUTUS.—LATIN: *ad, to, and loqui, to speak.*

In criminal procedure, when a prisoner is convicted on a trial for treason or felony, the court is bound to demand of him what he has to say as to why the court should not proceed to judgment against him: this demand is called the *allocutus*, and is entered on the record. Archb. Cr. Pl. 173.

ALLODARIY.—Owners of allodial lands. Owners of estates as large as a subject may have. Co. Litt. 1; Bac. Abr. *Tenure, A.*

ALLODIAL.—Land is said to be allodial, or to be held by an allodial tenure, when it is the absolute property of the owner and not held by him of any lord or superior, as in the feudal system. In the United States all land is held by allodial tenure, but no subject in England can hold land allodially. As to the derivation of the word, *see* Skeat's Etym. Dict. *See* FEUDAL SYSTEM.

ALLODIAL, (meaning of, in State constitution). 28 Wis. 367.

ALLODIUM.—An estate held and owned in one's own right, by an absolute title free from obligation of fealty, rent or service to any superior.

ALLODIUM, (defined). 9 Cow. (N. Y.) 513.

ALLONGE.—When the back of a bill of exchange or similar instrument has been filled up with indorsements, a slip of paper may be annexed to it to receive any further indorsements, and thenceforth forms part of the bill. This slip is sometimes known by the French word "allonge," (Byles Bills 150), from *allonger*, to lengthen. *See* 18 Pick. (Mass.) 63.

ALLOT.—

§ 1. **In general.**—To allot is to indicate that a portion of property held by a number of joint owners is in future to belong exclusively to a specific person called the "allottee." Thus a partition of land is effected by allotting to each owner his share in severalty. *Litt.* § 246 *et seq.*

§ 2. **Inclosed land.**—In England, an inclosure of land under the general inclosure act, 1845, is carried into effect by the land being allotted in accordance with the order or act authorizing the inclosure and the rights of the persons interested. "Allotment" signifies not only the act of allotting the land, but also the portion of land allotted; the allotments are named from the purposes for which they are made, *e. g.* allotments for exercise and recreation, allotments for laboring poor, allotments to the lord, commoners, &c. General Incl. Act, 1845, § 72 *et seq.* *See* INCLOSURE.

§ 3. **Shares of stock.**—In the law of corporations, to allot shares, debentures, &c., is to appropriate them to the applicants or persons who have applied for them; this is generally done by sending to each applicant a letter of allotment, informing him that a certain number of shares have been allotted to him, and he

is then called an allottee. An allotment of shares pursuant to an application for them, constitutes, with the application itself, an agreement binding both on the applicant and on the company, the application being an offer to take their shares, and the allotment an acceptance of the offer. (*Lind. Part.* 108; *Thring Comp.* 30 *et seq.* *See* SCRIP.) An allotment usually takes place where more shares are subscribed for than the charter permits to be issued.

§ 4. **Wages—allotment note.**—In the law of merchant shipping, an allotment of wages is where a seaman, by the agreement of service, stipulates for the periodical payment to his wife or other relative, of sums out of his wages by the shipowner or agent. This is done by an allotment note, which gives the necessary particulars, including the name of the person to whom the allotments are to be paid, and the relation in which he or she stands to the seaman, *e. g.* wife, parent, child, &c. *Maud. & P. Mer. Sh.* 165.

ALLOTTED, (in treaty with Indians). 6 Pet (U. S.) 582.

ALLOTMENT WARDEN.—By the English general inclosure act, 1845, § 108, when an allotment for the laboring poor of a district has been made on an inclosure under the act, the land so allotted is to be under the management of the incumbent and church warden of the parish, and two other persons elected by the parish, and they are to be styled "the allotment wardens" of the parish. *See* INCLOSURE; ALLOT, § 2.

ALLOW-ALLOWANCE.—FRENCH: *allowier*.

§ 1. **In procedure**, to allow is to admit the validity of something contended for by one of the parties. Thus the court allows a demurrer or plea, when it decides that it is well founded by giving judgment in favor of the person demurring or pleading. (*Archb. Cr. Pl.* 184.) So, when a claim against an estate in administration is made out, it is allowed, (*Dan. Ch. Pr.* 1100,) and a taxing master allows costs which have been properly incurred. The costs, charges and expenses which are allowed to a trustee are sometimes called his just allowances. *Id.* 1133. *See* COSTS.

§ 2. **Allowance pendente lite.**—In the English Chancery Division, where property which forms the subject of proceedings is more

than sufficient to answer all claims in the proceedings, the court may allow to the parties interested, the whole or part of the income, or (in the case of personality) part of the property itself. Stat. 15 and 16 Vict. c. 86, § 57; Dan. Ch. Pr. 1070.

ALLOW, (in a written instrument). 7 Ind. 263.

— (necessaries, in a will). Comyn 326.

— (power to, when includes power to reject). 9 Wend. (N. Y.) 508.

ALLOW OR PERMIT, (did not, in a plea). 2 Carr. & P. 110.

ALLOW TO GIVE, (in an instrument). 7 Ind. 263.

ALLOWANCE, (for maintenance of children). 4 East 76.

— (forfeited for desertion, bounty included). 2 Otto (U. S.) 77.

— (in a statute). 45 Ala. 264.

— (in act concerning county prisons). 58 Ind. 260.

— (of an account). 1 Baldw. (U. S.) 412, 539.

— (sale of land with). 13 Serg. & R. (Pa.) 141, 143.

— (to administrator, for maintenance of distributee). 3 Bibb (Ky.) 456.

— (to parent, for maintenance of children). 4 Bro. Ch. C. 223; 3 Esp. 1; 1 Jac. & W. 152.

— (to parent, out of infant's estate). 4 Mass. 97, 675; 16 Id. 28; 7 Wheel. Am. C. L. 161.

— (to wife, on divorce). 45 Ala. 264.

ALLOWANCE, JUST, (to trustee). Sax. (N. J.) 288.

ALLOWANCES, (in executors' accounts). 5 Johns. (N. Y.) Ch. 577.

— (judgment of forfeiture of pay and). 2 Otto (U. S.) 77.

ALLOWANCES, OTHER, (in bill of lading). Moo. & M. 208.

ALLOWED, (in a statute). 65 Me. 296.

— (in statute regulating dower). 41 Ala. 571, 586.

ALLOWED, FORTY DAYS SHALL BE, (in charter party). 2 Campb. 352; 12 East 179.

ALLOWING, (in a covenant). Willes 496, 499.

ALLOWING ALL PEOPLE TO PASS, (in a deed). 15 Wend. 564.

ALLOY.—A baser metal mixed with gold or silver in manufacturing, or coining. As respects coining the amount of alloy is fixed by law, and is used to increase the hardness and durability of the coin.

ALLOYNOUR.—One who conceals, steals or carries away a thing privately.

ALLUVIO MARIS.—New soil formed by the wash of the sea.

ALLUVION.—LATIN: *alluere*, to wash against.

Alluvion is where sand and earth are washed up by the sea or a stream of water so as to make an addition to the dry land; if it is sudden and considerable, the new

land belongs (in the case of the sea) to the sovereign; if it is by small and imperceptible degrees, the new land belongs to the owner of the adjoining land. (2 Bl. Com. 262.) In the Roman law, *alluvio* meant only an imperceptible addition (*incrementum latens*); (2 Just. Inst. 1, § 20); a sudden alluvion was called *avulsio*. See DERELICTION; ACCRETION; ACCESSION.

ALLUVION, (defined). 18 La. 122, 278; 64 Ill. 56; 9 Mart. (La.) 656; 23 Wall. (U. S.) 46.

— (addition to shore of river by). 10 Pet. (U. S.) 717; 23 Wall. (U. S.) 46; 1 Gill & J. (Md.) 249; 3 Mass. 352; 4 Pick. (Mass.) 268; Ang. Waterc. 220; 3 Barn. & C. 91.

— ("increment" used in place of). 17 Wend. (N. Y.) 593.

— (on banks of the Mississippi). 2 Am. L. J. 393 *et seq.*

ALLY.—A nation which has entered into an alliance (*q. v.*) with another nation (1 Kent Com. 69); also a citizen or subject of either of two or more allied nations.—*Bouvier*.

ALMS.—Anything given either by public authority, or by private individuals for the relief of the poor.

ALNAGER, or ULNAGER.—A sworn officer of the king whose duty it was to look to the assize of woollen cloth made throughout the land, and to the putting on the seals for that purpose ordained, for which he collected a duty called *alnage*.—*Cowell*; *Termes de la Ley*.

ALNETUM.—A place where alders grow.—*Cowell*; *Blount*; *Domesday Book*.

ALONG, (in a deed). 34 Conn. 421; 24 Wend. (N. Y.) 451; 4 Hill (N. Y.) 369; 23 N. Y. 498; 36 Barb. (N. Y.) 102; 1 Sandf. (N. Y.) 323, 334; 42 Barb. (N. Y.) 60.

— (in a statute). 1 Barn. & Ad. 447; 6 C. E. Gr. (N. J.) 259; 5 Vr. (N. J.) 532.

ALONG ITS ROUTE, (in a statute). 1 Otto (U. S.) 454.

ALONG THE BANK, (in a cession of land by one State to another). 13 How. (U. S.) 381, 416.

ALONG THE RAILWAY, (in contract). L. R. 6 H. L. 169.

ALONG WITH THE PLEA, (affidavit). 4 Halst. (N. J.) 84.

ALREADY INCURRED, (penalty, in a statute) 108 Mass. 32.

ALREADY RECEIVED, (moneys in condition of collector's bond). 9 Barn. & C. 35.

Also, (in a will). 1 Harr. & M. (Md.) 449, 15 Johns. (N. Y.) 293; 4 Rawle (Pa.) 68; 6 Barn. & C. 289; Cro. Car. 368; 5 East 94, 97; Holt 744; Ld. Raym. 831; 4 Mau. & S. 58, 60; 1 Salk. 234, 239.

ALTA PRODITIO.—High treason.

ALTA VIA.—The highway.

ALTARAGE.—Offerings made upon the altar; the profits of the priests accruing by means of the altar; contributions, tithes, &c.

ALTER, (a bank note). 10 Mass. 34-5.

—— (wharves, in city charter). 54 Mo. 172.

ALTER AND GRADE, (in railroad charter). 5 Dutch. (N. J.) 353.

ALTER, CHANGE OR DEFEAT THE SAME, (in a deed). 17 Wend. (N. Y.) 195.

ALTERATION OF WRITTEN INSTRUMENTS.—

§ 1. **In general.**—An instrument is said to be altered when any erasure or addition is made in it so as to change its sense or effect; thus, if a seal is added to an instrument originally not under seal so as to make it purport to be a deed, that is an alteration. 11 Mees. & W. 778; 13 *Id.* 343; Leake Cont. 426.

§ 2. **Material.**—An alteration is said to be material when it affects, or may possibly affect, the rights of the persons interested in the document. Thus, if the date of a check is altered, that is a material alteration, because the legal obligations of the drawer may be affected by it, *e. g.* if the bank fails before it is presented. (1 Ex. D. 176; 4 T. R. 320; 5 T. R. 367.) A material alteration invalidates the instrument even as against innocent strangers. (*Id.*) So, the addition of a seal to an instrument is a material alteration (*supra*, § 1). As a general rule, a material alteration, when made by the misfeasance or laches of the party for whose benefit the instrument was made, invalidates it, even as against innocent strangers. (Chit. Cont. 718; 11 Co. 27; 4 T. R. 320; 1 H. Bl. 357; 1 Sm. Lead. Cas. 871.) And so does an alteration made by a stranger, having the custody of the instrument, but not otherwise. See VOID.

§ 3. **An immaterial alteration** does not appear to have any effect in avoiding the instrument, even if made by a party to it. Leake Cont. 427.

§ 4. **Alterations in wills** are disregarded in England by the court granting probate, unless they are authenticated by the signatures of the testator and witnesses, or unless the fact of their having been made before execution can be proved. (Stat. 1 Vict. c. 26, § 21.) The initials of the testator and witnesses in the margin are enough. 5 P. D. 116.

ALTERATION, (defined). 5 Neb. 439.

—— (as used in a contract). 6 Halst. (N. J.) 284.

ALTERATION, (as used in a deed). 22 Pick (Mass.) 359.

—— (in a building, after contract). Peake N. P. 103.

—— (of agreement). 8 Pick. (Mass.) 322.

—— (of appeal bond). 5 Halst. (N. J.) 288; 6 *Id.* 187; 7 *Id.* 180, 331.

—— (of award). 2 Halst. (N. J.) 383; 7 Petersd. Abr. 725.

—— (of award, after delivery). 8 East 53.

—— (of bail bond). 5 Mau. & S. 223.

—— (of bank bills). 2 Nott. & M. (S. C.) 464, 471, *n.*

—— (of bank notes). 6 Munf. (Va.) 169.

—— (of bill of exchange). 6 Serg. & R. (Pa.) 361; 4 Barn. & Ald. 197; 5 *Id.* 674; 1 Campb. 82; 3 *Id.* 343; 2 Chit. 121, 122, 123; 15 East 17; 3 Esp. 57, 246; 6 Mau. & S. 142; Ry. & M. 37, 362; 1 Stark. 452; 4 T. R. 320; 1 Taunt. 420.

—— (of bill of sale). 4 Johns. (N. Y.) 54, 58.

—— (of bond). 4 Cranch (U. S.) 60; 9 *Id.* 28; 1 Paine (U. S.) 336; 9 Pet. (U. S.) 78; 4 Wash. (U. S.) 26; 1 Green (N. J.) 312; 3 *Id.* 460; 5 Halst. (N. J.) 340; South. (N. J.) 503, 811; 17 Serg. & R. (Pa.) 438; 2 Wheel. Am. C. L. 405; 7 *Id.* 251; 1 Barn. & C. 682; 3 Campb. 181; 4 Petersd. Abr. 623; 5 Taunt. 706, 707.

—— (of bond, after execution). 5 Mass. 538.

—— (of bond, by consent). 2 Green (N. J.) 583.

—— (of brand mark). 1 Wend. (N. Y.) 236.

—— (of capias, by changing direction). 10 Wend. (N. Y.) 573.

—— (of contract). 6 Mass. 522; 5 Neb. 233, 439; 2 Esp. 536.

—— (of deed). 1 Pet. (U. S.) 369, 552; 1 Greenl. (Me.) 73; 9 Mass. 307; 10 *Id.* 460, 461; 5 Har. & J. (Md.) 36; 1 N. H. 145; 2 Green (N. J.) 182, 583; 2 Halst. (N. J.) 175; 8 Cow. (N. Y.) 71; 9 *Id.* 125; 4 Johns. (N. Y.) 59; 22 Wend. (N. Y.) 388; 1 Hawks (N. C.) 222; 10 Serg. & R. (Pa.) 164; 16 *Id.* 46; 2 Whart. (Pa.) 453; 1 Hen. & M. (Va.) 391; 4 Wheel. Am. C. L. 276; 4 Barn. & Ald. 672; 11 Co. 27, 276; 3 Stark. 60; 4 T. R. 339.

—— (of petition for a new highway). 2 Greenl. (Me.) 50; 3 *Id.* 103, 107.

—— (of plan). 12 N. H. 466.

—— (of plea). Penn. (N. J.) 105; South. (N. J.) 112.

—— (of process, when fatal). 19 Johns. (N. Y.) 170.

—— (of promissory note). 5 Monr. (Ky.) 31; 2 Har. & J. (Md.) 328; 3 *Id.* 159; 6 Mass. 428, 430; 9 *Id.* 59; 11 *Id.* 309; 5 Pick. (Mass.) 312; 10 *Id.* 228; 1 N. H. 95; 2 *Id.* 171, 543; 4 *Id.* 455; 2 Green (N. J.) 182; 1 Halst. (N. J.) 215; 3 *Id.* 58; South. (N. J.) 737; 18 Johns. (N. Y.) 315; 19 *Id.* 391; 17 Wend. (N. Y.) 238; 24 *Id.* 374; 7 Serg. & R. (Pa.) 505; 3 Yeates (Pa.) 391; 1 Nott. & M. (S. C.) 102; 10 East 431; 12 El. & B. 763; 1 Mau. & S. 735.

—— (of property). 7 Wheel. Am. C. L. 558; 8 *Id.* 227.

—— (of property, to prevent replevin). 2 Rawle (Pa.) 426.

—— (of record of justice, after certiorari presented). Penn. (N. J.) 905, 920.

—— (of reports, how proved). 1 Pick. (Mass.) 362.

ALTERATION. (of road). 9 Gray (Mass.) 189, 190; 7 Mass. 158; 8 *Id.* 268.

— (of road, in Massachusetts Road Act). 1 Pick. (Mass.) 418.

— (of sealed instrument, by parol authority). 13 Wend. (N. Y.) 587; 1 Anstr. 228.

— (of transcript). South. (N. J.) 683.

— (of will). 7 Pick. (Mass.) 61; 7 Johns. (N. Y.) 394; 9 *Id.* 312; 15 *Id.* 293; 4 Wheel. Am. C. L. 451.

— (of written instrument). 10 Mass. 384; 6 Cow. (N. Y.) 746; 15 East 29.

— (under mechanics' lien law). 81 Ill. 498.

ALTERATION AND AMENDMENT, (as used in a statute). 6 Barn. & C. 181; 9 Dowl. & Ry. 309.

ALTERATION OR ADDITION, (of a building). 106 Mass. 532, 537.

ALTERATIONS, (in affidavit indorsed on appeal bond). 2 Green (N. J.) 118.

ALTERATIONS, ERASURES, &c., (effect of). 1 Aik. (Vt.) 355; 2 Wheel. Am. C. L. 470.

ALTERING, (in mechanics' lien act). 81 Ill. 498.

ALTERNAT.—A usage among diplomatists by which, where several different powers claiming the same rank and precedence are parties to a treaty or convention, their names, both in the preamble and signatures, are changed in position alternately, so that the copy intended for each power may contain its name first, and above the other names and signatures. Wheat. Int. L. pt. 2, ch. 3, § 4.

ALTERNATION, (defined). Hob. 253.

Alternativa petitio non est audienda: An alternative prayer is not to be heard.

ALTERNATIVE OBLIGATION.—An obligation binding the obligor to do one of two things at his election, the performance of either of which will satisfy the instrument.

ALTERNATIVE RELIEF.—See RELIEF.

ALTERNATIVE WRIT.—A writ commanding the person against whom it is issued to do a specified thing, or show cause to the court why he should not be compelled to do it. See MANDAMUS.

Alterum non lædere: Not to injure another. This maxim, and two others, *honeste vivere*, and *summ cuique tribuere*, (*q. v.*) are considered by Justinian as fundamental principles upon which all the rules of law are based.

ALTHOUGH, (in pleading). Dyer 113 b.
— (as an averment in action of covenant). Comyn 632.

ALTHOUGH OFTEN REQUESTED, (in pleading). 5 Day (Conn.) 328; 1 Saund. Pl. 159; 1 Str. 88; 5 T. R. 409.

ALTIVS NON TOLLENDI.—A servitude in the civil law, which restrained the owner of a house from building it above a limited height.

ALTIVS TOLLENDI.—A privilege, in the civil law, by which one could build his house as high as he pleased.

ALTO ET BASSO.—High and low. A term applied to a full and complete submission of all matters in controversy to arbitration.—Cowell.

ALTUM MARE.—The high sea.

ALUMNUS.—(1) A foster child. (2) A graduate of a college or university.

ALVEUS.—The bed of a stream which runs through its natural or ordinary channel.

ALWAYS, (in a statute). 7 Heisk. (Tenn.) 468.

— (in exception in grant). 4 Mod. 12.

AMALGAMATION.—Where two incorporated companies or societies become united by one of them being merged in the other, it is called in England amalgamation. In the United States the term generally used is consolidation, (*q. v.*) In England the amalgamation of two companies registered under the companies act, 1862, is effected by one of them going into voluntary liquidation, and authorizing the liquidators to transfer or sell its property or business to the other company in consideration of shares in the latter company to be distributed among the members of the company being wound up. §§ 161, 162; Thring Jt. S. Co. 189.

AMALGAMATION, (under power in articles). L. R. 4 Eq. Cas. 341.

AMALPHITAN CODE, or TABLE.—A code of laws on maritime subjects compiled for the republic of Amalphi in the eleventh century, and in force in the Mediterranean countries.

AMBACTUS.—LATIN: *ambire*, to go about.
A servant whose services were hired out by his master.

AMBASSADORS.—Diplomatic agents residing in a foreign country as representatives of the States by whom they are despatched. In the strict sense of the word, an ambassador can only be despatched by certain States of superior power and dignity, but, in its modern use,

The word also includes resident ministers despatched by any independent State. Mann. Law of N. 106.

§ 1. When employed on particular or unusual occasions, or residing in a foreign country for an uncertain length of time, an ambassador is termed extraordinary. When sent on a permanent mission he is called an ordinary ambassador.

§ 2. **Privileges.**—Ambassadors and their domestic servants are privileged from all arrest and process; (1 Burr. 401; 3 *Id.* 1731; Cas. t. Hardw. 5.) persons prosecuting or executing any process of imprisonment against any ambassador or his domestic servant, without his leave, are guilty of a misdemeanor. Stat. 7 Anne, c. 12; 1 Sm. Lead. Cas. 714; 2 Steph. Com. 485; U. S. Rev. Stat. § 4064. See CHARGE D'AFFAIRES; EXTRATERRITORIALITY; ALIENAGE.

§ 3. **The United States** have always been represented by ministers plenipotentiary, never having sent a person of the rank of an ambassador in the diplomatic sense. 1 Kent Com. 39, *n.*

AMBASSADOR, (defined). 1 Com. Dig. 573; 4 Burr. 2016.

AMBASSADORS, (other names by which they have been called). 4 Inst. 153.

AMBASSADORS AND OTHER PUBLIC MINISTERS, (in U. S. constitution). 7 Op. Att.-Gen. 186.

AMBIDEXTER.—A person who uses both hands alike. The term was anciently used to denote an attorney who took money from both parties, and later, a juror who acted in like manner.

Ambigua responsio contra proferentem est accipienda: An ambiguous answer is to be construed against him who offers it.

Ambiguis casibus semper præsumitur pro rege: In doubtful cases the presumption is always in behalf of the crown.

Ambiguitas contra stipulatorem est: An ambiguity is taken against the party using it. Thus, if in a lease words of exception be used ambiguously, the same being words of the lessor are construed most strongly as against him.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur: A hidden ambiguity of the words may be supplied by evidence; for an ambiguity which arises from an extrinsic fact may be removed by proof of such fact.

Ambiguitas verborum patens nulla verificatione excluditur, (or suppletur): A patent ambiguity of the words cannot be removed (or supplied) by extrinsic evidence.

AMBIGUITY.—LATIN: *ambiguitas*.

A doubtfulness of meaning of language used in a writing.

§ 1. **Patent and latent.**—In ascertaining the intention of a testator as expressed in his will, or of the parties to a contract, a distinction is made between patent and latent ambiguities. Thus, if a blank is left, or if there is an obvious uncertainty or inconsistency in the instrument, this is a patent ambiguity, which cannot be supplied or explained by extrinsic evidence. If, however, the instrument is apparently complete and clear, but it appears in the course of applying or executing it that its words are equally applicable to two different things or persons, and there is nothing in it to show which was meant, then the ambiguity is latent, and extrinsic evidence is admissible to show which was meant: as where a testator devises his "manor of Dale," and he has two manors of that name; or where he bequeaths property to his cousin, A. B., and he has two cousins of that name; or where persons contract with reference to a ship "Peerless," and it appears that there are two of that name. Leake Cont. 179; Wats. Comp. Eq. 1206. See EVIDENCE.

AMBIGUITY, (in a written instrument). 3 Harr. (N. J.) 169.

— (in pleading). 8 Bing. 75.

— (patent and latent, doctrine of). 23 Wend. (N. Y.) 71.

Ambiguum pactum contra venditorem interpretandum est: An ambiguous contract is to be interpreted against the seller.

Ambiguum placitum interpretari debet contra proferentem: An ambiguous pleading should be interpreted against the party offering it.

AMBIT.—Circuit or compass; a boundary line; an exterior line or limit.

AMBULATORY.—LATIN: *ambulare*, to walk.

That which is changeable or movable. The right of a testator to alter his will during his lifetime is called *ambulatoria voluntas*.

Ambulatoria est voluntas defuncti usque ad vitum supremum exitum: The will of a decedent is ambulatory until the last moment of his life.

AMELIORATING.—See WASTE.

AMENABLE.—**FRENCH:** *amener*, to bring to.

Accountable; responsible; liable to punishment. Thus, one who has violated a penal statute is said to be amenable, (*i. e.* liable) to a fine.

AMENDE HONORABLE.—This term was applied in the English law to a penalty imposed by way of disgrace for the commission of an offence. It was anciently used in the French law with a similar meaning. Its more modern meaning is, a satisfactory apology.

AMENDED, (entry). 4 Wheat. (U. S.) 495.

AMENDING, (a road). 1 Pick. (Mass.) 418.

— (bill in equity). 1 Green (N. J.) Ch. 387.

— (bill of privilege). 1 Harr. (N. J.) 63.

— (demise in ejectment). Penn. (N. J.) 50, 710; South. (N. J.) 850; 3 Halst. (N. J.) 366.

— (docket, by justice). 1 Green (N. J.) 195.

— (name of witness on *certiorari*). Penn. (N. J.) 650.

— (narr. after judgment). 6 T. R. 543.

— (new assignment). 7 Halst. (N. J.) 62.

— (original writ). Penn. (N. J.) 632, 633; 1 Halst. (N. J.) 166.

— (pleadings). 2 Watts (Pa.) 306; 5 Id. 373; 2 Whart. (Pa.) 132, 155.

— (process, what allowable). 14 Wend. (N. Y.) 230.

— (record). 5 Halst. (N. J.) 222; 2 Green (N. J.) 20, 21, 81; 3 Id. 416.

— (transcript). 1 Halst. (N. J.) 220, 230, 303; 3 Id. 135; 4 Id. 106, 291; 7 Id. 181.

AMENDMENT.—**LATIN:** *e*, from or out of, and *menda*, a spot or stain.

§ 1. In legislation. An alteration in the draught of a bill proposed, or in a law already passed.

§ 2. In procedure. The alteration of a pleading, writ, petition, or the like, to make it accord with the facts of the case or with the rules of practice. Where a person commences an action, and finds out from the defendant's pleadings or his answer to interrogatories that he has misapprehended the facts, it is generally necessary for him to amend his declaration or complaint (and in some cases his writ) by stating the true facts, adding or striking out parties, &c. So the defendant may find it necessary to amend his pleadings. Under statutes in modern practice, general power of allowing amendments is given to the court, in order to prevent slips, bad pleading, &c., from defeating justice. This power is often exercised so late as at the trial of an action, where it is obvious that the amendment does not take the

other side by surprise. The court may also compel a party to amend his pleading, *e. g.* if it is calculated to embarrass his opponent.

AMENDMENT, (of declaration). South. (N. J.) 852.

— (of decree). 5 Watts (Pa.) 176, 186.

— (of justice's docket after *certiorari* presented). Penn. (N. J.) 905.

— (of pleadings). 5 How. (N. Y.) Pr. 206, 310, 361; 6 Id. 200; 7 Id. 108; 7 Abb. (N. Y.) Pr. 352.

AMENDS.—Compensation for a wrong committed, given to the injured party by the wrong-doer.

By stat. 11 and 12 Vict. c. 44, when notice of an action against a justice of the peace for anything done by him in execution of his office has been given to him, he may tender the complainant such sum of money as he may think fit, as amends for the injury complained of, and, if the action is commenced, he may pay it into court. If the jury are of opinion that the plaintiff is not entitled to more, they must give a verdict for the defendant, who is then entitled to have his costs paid out of the sum in court, and the plaintiff only receives the balance. Archb. Pr. 1054. Parish, borough and special constables, and some other officers and persons have a similar privilege. *Id.* 1059 *et seq.* Similar statutes are to be found in some of the United States.

AMERCEMENT.—A pecuniary penalty or fine imposed upon an offender at the discretion of the court.

§ 1. Of sheriff. When a sheriff failed to comply with the orders of the court, he could formerly be amerced, and in some of the United States it is provided by statute that the sheriff may be amerced for making a return contrary to the statute.

§ 2. In old English law, **amercement** or **amerciament**, was a fine to which a plaintiff or demandant was liable if he failed in his action, or was nonsuited, &c. To be amerced was to be in mercy of the king, *in misericordia domini regis*, and the amount of the fine imposed seems to have been originally arbitrary (Britton 219b. In Britton's time, other people besides parties to suits could be amerced. See 4 a, 15 a, 218 b), but in modern times it was always assessed or assessed by a jury (8 Co. 39 b), therein differing from a fine in the technical sense, which is assessed by the court (*Id.* 39 a). Amerciaments are now wholly obsolete (3 Bl. Com. 376).

AMERCEMENT, (of sheriff). 6 Halst. (N. J.) 334; 1 Green (N. J.) 341; 2 Id. 350.

AMERICAN CLAUSE, (in policy of insurance, defined). 14 Wend. (N. Y.) 399, 475.

AMERICAN SHIP, (insurance of). 3 Campb. 382; 4 Esp. 108.

— (warranty that ship is). Peuke Add. Cas. 119.

AMI.—A friend. See *PROCHEIN AMY*.

AMICABLE ACTION.—An action instituted in court by consent of the parties.

AMICABLE ACTION, (in an agreement). 4 Binn. (Pa.) 282.

AMICABLE COMPOUNDERS, (under Louisiana Code). 7 La. Ann. 171.

AMICABLE LAWSUIT, (distinguished from arbitration). 20 La. Ann. 535.

AMICUS CURIAE.—A friend of the court. A person who, being in court and a stranger to the case then in course of discussion, gives the judge information on a question of which he may take judicial notice; *e.g.* of an unreported decision, &c. Counsel not unfrequently act as *amici curiae* in cases in which they are not concerned.

Amici consilia credenda: The advice of a friend is to be trusted.

AMIRAL.—See *ADMIRAL*.

AMITA.—An aunt on the father's side.

AMITA MAGNA.—A great-aunt on the father's side.

AMITA MAJOR.—A great-great-aunt on the father's side.

AMITA MAXIMA.—A great-great-great-aunt on the father's side.

AMITINUS.—Brothers' or sisters' children.

AMITTERE CURIAM.—To be deprived of the right to attend court.

AMITTERE LEGEM TERRAE.—To lose the protection afforded by the law of the land.

AMITTERE LIBERAM LEGEM.—To lose the right to give evidence in court. This and the two preceding expressions were applied to outlaws.

AMNESTY.—An act of government granting oblivion of past offences. It is granted from motives of public policy and has the effect of effacing or destroying the offence as to all who may have been concerned in its commission, and may be granted either before or after conviction. In these respects it differs from pardon, which is given to an individual, after conviction, to remit the punishment attached by the law to the crime.

AMNESTY, (defined). 10 Ct. of Cl. (U.S.) 397.
— (for treason, by proclamation). 5 Otto (U.S.) 152.

AMONG, (in power to appoint). 5 Ves. 771, 849, 857.

— (in a will). 8 Conn. 47; 2 Ves. 351, 639; 4 Wheel. Am. C. L. 444; 7 *Id.* 408.

AMONG; BETWEEN, (in a will). 23 How. (N.Y.) Pr. 415.

AMONG CHILDREN, (power to dispose). 1 Mad. Ch. 318.

— (in a will). 3 Halst. (N.J.) 90; 6 Munf. (Va.) 352.

AMONG THE SEVERAL STATES, (in U. S. constitution). 9 Wheat. (U.S.) 194; 3 Cow. (N.Y.) 745.

AMONGST, (in a will). 2 Atk. 122; 4 Bro. C. C. 17; 2 Mad. Ch. 96; 4 T. R. 82, 88; 5 Binn. (Pa.) 23.

AMORTISE.—In the old writers, amortise is used in the sense of conveying land in mortmain, with the license of the superior lords and the crown. (Stat. 15 Rich. 2, c. 5; 2 Bl. Com. 272.) "Amortissement est congé ou octroy que fait aucun hault justicier à personne ou gens d'église, de tenir aucun héritage en leur main à perpétuité." Grand Coust. 258. See *MORTMAIN*.

AMORTIZATION.—An alienation of land in mortmain. In its modern sense, amortization is the operation of paying off bonds, stock, or other indebtedness of a State or corporation.

AMOTION.—*LATIN: amovere*, to remove.

§ 1. The act of taking away, removing. The term is particularly applied to the act of removing an officer of a corporation from office.

§ 2. The statute 22 Geo. III. c. 75 (Burke's Act), empowers the governor and council of any colony to amove any person from any office, and gives the person so amoved the right to appeal to the king in council, if he considers himself aggrieved.

AMOTION, (of officers of corporation, distinguished from "disfranchisement"). Ang. Corp. 237.

AMOUNT, (jurisdiction dependent upon). 3 How. (U.S.) 771; 2 La. Ann. 163; 11 *Id.* 439; 18 Cal. 409; 23 *Id.* 198; 21 La. Ann. 13, 65, 307; 22 *Id.* 49; 17 How. (U.S.) 17; 12 Wall. (U.S.) 451; 23 Cal. 61, 198; 18 B. Mon. (Ky.) 225; 15 Vt. 620; 22 La. Ann. 25; 22 Cal. 169; 30 *Id.* 545; 7 Bush (Ky.) 26.

AMOUNT COVERED.—This term is applied in insurance law to the amount insured, and for which the insurers are liable in case of loss.

AMOUNT FROM DAY-BOOK, (in state of demand). 3 Halst. (N.J.) 139.

AMOUNT IN CONTROVERSY, (synonymous with claim). 18 Minn. 216.

AMOUNT OF \$100, (in state of demand). South. (N.J.) 71.

AMOUNT OF LOSS.—A term used in insurance law to denote the diminution or destruction of the value of the property (or of the charge upon it,) insured, occasioned by the risk insured against, not exceeding the amount covered by the policy.

AMOVEAS MANUS.—

§ 1. **Writ of.**—In England, this is a writ issuing from the High Court of Justice (Exchequer Division), and commanding the restitution to a person of property belonging to him which is in the possession of the crown: as where judgment is given against the crown in proceedings by extent (*q. r.*), or where in former times the property of an outlaw was seized, and the outlawry was afterwards reversed. Chit. Pr. (12th edit.) 1318. See TRAVERSE.

§ 2. **Judgment of.**—Under the old practice on petitions of right (*q. r.*), where the decision was against the crown, the judgment was called judgment of *amoveas manus*, because it directed that the king's hands should be removed from the property, and possession restored to the suppliant; the modern judgment in such a case merely specifies the relief to which the suppliant is entitled, but has the same effect as a judgment of *amoveas manus* formerly had, the peculiarity of it being that it transfers the seisin or possession of the property to the suppliant, without any execution issuing. Stat. 23 and 24 Vict. c. 34; Staunf. P. C. & Pr. 77 b; Chit. Prerog. 349; 3 Steph. Com. 657.

AMPLE AND FULL A MANNER AS IT HAS BEEN ASSIGNED TO HIM, (in a covenant). 14 Mass. 389.

AMPLE ESTATE, (to pay debts, after voluntary conveyance to children). 2 Yeates (Pa.) 508.

AMPLIATION.—A term used in the civil law to denote a deferring of judgment until the cause is further considered. It was also used as meaning an official copy of a notarial act.

AMY.—See AMI; PROCHIN AMY.

AN OCCUPANT, (of land, under a statute). 5 Abb. (N. Y.) Pr. N. S. 445, 449.

ANATOCISMUS.—A civil law term signifying interest upon interest; compound, or repeated interest.

ANCESTOR.—A deceased person from whom another has inherited land. A former possessor. See HEIR; PREDECESSOR.

ANCESTOR, (in relation to succession of real estate). 18 Ohio St. 311; 5 N. Y. 263; 3 Barb. (N. Y.) Ch. 438; 52 N. Y. 67; 108 Mass. 40.

ANCESTOR, (in statute regulating descents). 1 Bradf. (N. Y.) 314, 318; 37 Conn. 402; 46 Id. 119; 3 Ohio St. 394; 18 Id. 311; 52 N. Y. 67; 108 Mass. 40; Penn. (N. J.) 487, 489.

— (in statute of distributions). 37 Conn. 402.

— (when includes predecessor). Wilberf. Stat. L. 240.

ANCESTRAL.—Relating or belonging to ancestors, or derived from them.

ANCHOR WATCH, (duties of). 2 Low. (U. S.) 220.

ANCHORAGE.—The duty paid for the privilege of anchoring a ship in a port.

ANCIENT.—**LATIN:** *antiquus*, from, *ante*, before.

Old; something which has existed for a period of time long enough to entitle it to certain privileges.

ANCIENT DEMESNE.—A freehold tenure in England, confined to socage lands held of manors which belonged to the crown in the reigns of Edward the Confessor and William I., and are described in Domesday Book as crown lands (*terræ regis* or *terræ regis Edwardi*). The tenants are freeholders,* and formerly had exceptional privileges, the chief of which was the right to sue and be sued on questions affecting their lands in a manorial court called the Court of Ancient Demesne (2 Bl. Com. 99); this and most of their other privileges have been taken away (Stat. 3 and 4 Will. IV. c. 27, § 36; 3 and 4 Will. IV. c. 74, § 4), but they still have in many instances peculiar customs of descent, dower, curtesy, &c., similar to those of borough-English and gavelkind lands. Elt. Copyh. 7.

ANCIENT DEMESNE, (defined). 1 Salk. 57.

— (what manors were). 4 Inst. 269.

ANCIENT HOUSES, or MESSUAGES.—In England this term is applied to houses or buildings erected before the time of legal memory (Cooke Incl. 35, 109), that is, before the reign of Richard I., although practically any house is an ancient messuage if it was erected before the time of living memory, and its origin cannot be proved to be modern. Ancient houses frequently have rights of common (*e. g.* common of estovers) attached to them and to houses built in their stead on the old site (*Id.*; Wms. Comm. 186), and the easements of light and support were formerly confined to ancient houses, but now the provisions of the prescription act and the modern rules applied by analogy to cases not within the act, have made the doctrine unimportant.

ANCIENT LIGHTS.—See LIGHT.

* "There are, however, as a rule, in manors of ancient demesne, customary freeholders, and sometimes copyholders, at the will of the lord, as well as the true tenants in ancient demesne." Elt.

Copyh. 8; Britt. 165a. It is right to add that some writers consider tenure in ancient demesne to be a species of copyhold tenure, but the weight of authority is the other way. See Wms. Seis. 31.

ANCIENT READINGS.—Essays on the English statutes of early times.

ANCIENT RENT, (defined). 2 Vern. 542.

ANCIENT WALL, (what is). 4 Duer (N. Y.) 53, 63.

ANCIENT WINDOW, (what is). Moo. & M. 400.

ANCIENT WRITINGS.—Documents of such a date that it cannot be reasonably expected to find living persons acquainted with the handwriting of the supposed writer. In such a case the law allows them to be compared with other ancient documents which have been preserved as authentic; but no proof of a deed more than thirty years old is required if it comes from an unsuspected repository. (Best Ev. 307, 335.) Ancient writings are sometimes allowed to prove matters of public and general interest, although they would otherwise be rejected for want of originality. *Id.* 633.

ANCIENTS.—In the English inns of court this expression is used to denote those who by length of membership have attained a certain standing.

ANCILLARY.—*LATIN*: *ancilla*, a female servant.

Assistant; auxiliary; subservient; a proceeding attendant upon, or which aids another proceeding considered as principal. Thus, ancillary administration is an administration granted in a state other than that of the decedent's domicile, for the purpose of collecting assets to be found there, and bringing them into the general administration.

ANCIPITUS USUS.—In international law—useful for various purposes, both civil and warlike. Of doubtful use.

AND, (in condition of bond). 3 Mod. 235.

—— (in crimes act). 46 Iowa 670.

—— (in a lease). 4 Bing. 276.

—— (in pleading). 4 Pick. (Mass.) 165.

—— (in a statute). 16 Mass. 289; 64 N. C. 493.

—— (in a will). 1 Har. & M. (Md.) 500; South. (N. J.) 420; 4 Wheel. Am. C. L. 358.

—— (construed to mean "or"). 4 Wheel. Am. C. L. 206; 19 Am. Dec. 515; 24 Ill. 387; 12 Mass. 82; 1 Wend. (N. Y.) 388; 3 Atk. 408; 4 Com. Dig. 154, n. (g); 8 *Id.* 424; Cro. Jac. 322; Ld. Raym. 1366; 1 Russ. 171; Str. 594; 1 Swanst. 330; 3 Ves. 450; 7 *Id.* 458.

—— (in statute, when read "or"). 1 Dak. T. 308; 50 Iowa, 389; 40 N. Y. 97; 1 Serg. & R. (Pa.) 141; 3 Yeates, (Pa.) 117; 4 Barn. & C. 208; Wilberf. Stat. L. 130, 252.

—— (in a will, when read "or"). 7 Greenl. (Me.) 210; 8 *Id.* 148; 24 N. Y. 463; 1 Yeates

(Pa.) 41, 319, 413; Ambl. 256; 2 Ves. 240; 8 Com. Dig. 469; 12 East 288, 293; L. R. 1 Eq. Cas. 551; 2 *Id.* 400.

AND, (when "or" should read "and"). 2 Atk. 643; 5 Com. Dig. 338; 6 Ves. 341, 343, 557, 560; 14 Pick. (Mass.) 453; 15 *Id.* 27; 6 Johns. (N. Y.) 54.

AND ALSO, (in a complaint for selling intoxicating liquors). 7 Gray (Mass.) 335.

—— (in a deed). 2 Brod. & B. 512.

—— (in description in a deed). 13 Mass. 464-5.

AND B., (in joint and several bond signed by A. without authority). 2 Bos. & P. 338.

AND ELSEWHERE, (in maritime contract). 1 Hall's L. J. 210.

AND IN ADDITION TO THAT, (in a will). 26 Vt. 260, 268.

AND INDORSEMENT MADE ON THE POLICY, (in fire insurance policy). 50 Wis. 538.

AND NOT, (in pleading). 2 Chit. Pl. 616; 2 T. R. 439.

AND SO FORTH, (in an award). 4 Pick. (Mass.) 179.

—— (in a bill of particulars). 105 Mass. 21.

—— (in a bond). 3 T. B. Monr. (Ky.) 196.

—— (in pleading). 2 Bing. 384; 3 Chit. Pl. 892, n. (a), 922, n. (n); Cro. Jac. 67, 502; 8 T. R. 633.

—— (in a plea). 1 Cow. (N. Y.) 213; 15 Ill. 87.

—— (at end of replication). Cowp. 407.

—— (in a will). 2 Har. & M. (Md.) 273; 16 Ves. 191; 3 Wils. 143.

AND THAT, (in a covenant). 1 H. Bl. 34.

—— (in a deed). 1 Brod. & B. 331.

—— (in a lease). 3 Moo. J. B. 703; Dyer 255, pl. 4.

AND THE SAID I. S., (in pleading). Ld. Raym. 1178.

AND THEREUPON, (in pleading). 100 Mass. 195.

ANDROLEPSY.—The taking by one country of the subjects of another for the purpose of compelling the latter to do justice.

ANECIUS.—The eldest, or first-born.

ANGARIA.—A punishment or service exacted under the Roman law by the government. In the feudal law the term was used to denote a forced or excessive service exacted of a vassal by a superior.

ANGEL.—An ancient English gold coin equal to about ten shillings.

ANGILD.—In old Saxon law, the single value of a man, or thing, as distinguished from *twigild*, *trigild*, &c., the double or triple value.—*Spelman*.

ANGLICE.—In English. A term formerly used in pleading when a thing was described both in Latin and English, inserted immediately after the Latin and as an introduction of the English translation.

ANIMAL.—LATIN: *anima*, breath, life.

A living being, inferior to man, having the power of voluntary motion.

§ 1. *Domitæ* are such as are domesticated or tame.

§ 2. *Feræ naturæ* are such as are of a wild and untameable disposition, such as deer, fish, &c. Independently of the statutory provisions, known as the game laws, applicable to these animals, they are exceptions from some general rules of law: thus a man can have no complete ownership in them, although he may have the possession of them; and, therefore, as soon as they cease to be in his actual possession, any one else may seize and keep them. A man may, however, have a qualified ownership in animals *feræ naturæ*, either by taming and confining them, or by having the privilege of keeping them in a forest, park, or other place, for in either of those cases no other person can lawfully take them so long as they remain in confinement. (2 Bl. Com. 14, 391, 419); so the owner of a several fishery has a qualified property in the fish before they are caught. See FISHERY; OCCUPANCY.

§ 3. *Pass by descent*.—Again, on the death of a man, the deer in his park, the rabbits in his warren, the doves in his dove-house, and the fish in his pond, pass to his heir and not to his executors, as in the case of domestic animals and other chattels. Co. Litt. 8a.

§ 4. *Larceny of*.—Animals *feræ naturæ* are the subject of larceny in England, if they are kept for profit or any domestic purpose, or if they are ordinarily kept in a state of confinement. (Steph. Crim. Dig. 202; Stat. 24 and 25 Vict. c. 96.) There is some conflict in the local statutes upon this subject in America. See GAME; CRUELTY.

ANIMAL, (in a statute). 13 Wall. (U. S.) 162; 3 Best & S. 382; 7 L. T. N. S. 624; 9 Jur. N. S. 796; 7 Blatchf. (U. S.) 235.

—— (in declaration). Ld. Raym. 110.

ANIMUS.—Intention, purpose. The word is used in the following phrases—

Animus et factus: Intention and act. Used to denote those acts which become effective only when accompanied by a particular intention.

Animus hominis est anima scripti: The purpose of the man is the soul of the writing.

Animo cancellandi: With intention of cancelling.

Animo]oustodiendi: With intention of keeping.

Animo defamandi: With intention of defaming. Used to denote the malicious intent necessary to make words spoken actionable.

Animo differendi: With intention of obtaining delay.

Animo donandi: With intention of giving. Used with reference to the intention to give, necessary to constitute a gift.

Animo et corpore: By the mind and the body. By both intention and physical action.

Animo felonico: With felonious intent.

Animo furandi: With intention of stealing.

Animo lucrandi: With intention of gaining.

Animo manendi: With intention of remaining. Used to express the intention to remain which must accompany a change of residence in order to acquire a new domicile.

Animo morandi: With intention of staying; delaying.

Animo possidendi: With intention of possessing.

Animo recipiendi: With intention of receiving. Used with reference to the intention to receive necessary to constitute a gift.

Animo republicandi: With intention of republishing.

Animo revertendi: With intention of returning. Used to express the intention to return which prevents a change of residence from becoming a change of domicile.

Animo revocandi: With intention of revoking.

Animo testandi: With intention of making a will.

ANN.—A term used in Scotch law to denote half a year's stipend, beyond what is due for the incumbency, payable to the relict, child or next-of-kin of a minister, after his death.

ANNATES.—The first fruits paid, under the ecclesiastical law, to the pope, out of spiritual benefices.

ANNEX.—LATIN: *ad*, to, and *nectere*, to bind.

To attach one thing permanently to another. The word is properly used to express the idea of joining a smaller or inferior thing with another, larger, or of higher importance.

ANNEXATION, (in a statute). 29 Me. 268.

—— (of part of town). 1 Me. 129.

ANNEXED, (in a statute). 68 Me. 322; 105 Mass. 100.

—— (when exhibits are). 105 Mass. 96.

—— (to deed, schedule). 14 East 572.

ANNEXED TO, (agreement). 7 Barn. & C. 390.

ANNEXED WILL, (in a plea). 1 Wheel. An. C. L. 70.

ANNI NUBILES.—Marriageable age in a girl.

ANNICULUS.—A child one year old.

ANNIVERSARY.—An annual day, in old ecclesiastical law, set apart in memory of a deceased person. Also called "year day" or "mind day."—*Spel. Gloss.*

ANNO DOMINI.—In the year of our Lord. Commonly abbreviated to A. D., and used in connection with Arabic or Roman figures, or words, to denote any particular year of the Christian era.

ANNONA.—Grain; food. An old English and civil law term to denote a yearly contribution by one person to the support of another.

ANNOTATION.—LATIN: *ad*, to, and *notare*, to mark.

(1) A remark, note or commentary on some passage of a book, intended to illustrate its meaning.—*Webster*. (2) In the civil law, the reply of the prince to questions put to him by private persons respecting some doubtful point of law.—*Bouvier*.

ANNOUNCED, (finding of court, in practice act). 56 Ind. 298.

ANNUAL EMOLUMENT, (in telegraph act). 1 Q. B. D. 658.

ANNUAL INCOME, (in a will). 4 Abb. (N. Y.) N. Cas. 317.

ANNUAL OFFICE, (what is). 4 Dill. (U. S.) 190.

ANNUAL PROFITS, (what are, in real property law). 2 Atk. 490.

—— (devise to pay debts out of). 1 Vern. 104.

—— (in trust deed). 1 P. Wms. 419.

—— (of canal company). 9 Barn. & C. 810.

ANNUAL RENT, (in a lease). 5 Barn. & C. 482.

ANNUAL SUM, (charged upon land by will). 1 Bland (Md.) 296.

ANNUAL VALUE, (in dower). Penn. (N. J.) 895.

ANNUALLY, (in a bond). 6 East 512.

—— (in a statute). 16 Gray (Mass.) 497.

—— (in a will). 4 McCord (S. C.) 59.

—— (interest to be paid, in a will). 5 Binn. (Pa.) 474.

—— (note for 8 years, interest payable). 6 Wheel. Am. C. L. 230.

—— (officer elected, how long he serves). Ang. & A. Corp. 75-78; 6 Cow. (N. Y.) 23; 1 Paige (N. Y.) 595.

—— (payment of interest). 6 Gray (Mass.) 163.

ANNUALLY, AT TWO HALF YEARLY PAYMENTS, (I agree to pay). 4 Wheel. Am. C. L. 36.

ANNUALLY CHOSEN, (respecting corporate officers). 6 Conn. 428; 2 Gill & J. (Md.) 254; 8 Mass. 275; 9 Johns. (N. Y.) 148; 5 Id. 366; 1 McCord (S. C.) 41; 2 Bro. P. C. 289, 294.

ANNUALLY, DURING WIDOWHOOD, (annuity payable). South. (N. J.) 144.

ANNUALLY, WITH INTEREST, (note payable). 7 Greenl. (Me.) 48; 2 Mass. 568; 3 Id. 221; 8 Id. 455.

ANNUITY.—LATIN: *annuus*, yearly.

The right to the yearly payment of a certain sum of money, granted or bequeathed by one person to another.

§ 1. **Personal and real.**—When it charges only the person and personal representatives of the grantor, or is granted out of or charged on personal property, it is a personal annuity. When it issues out of land, it is a real annuity or rent-charge, and may be limited for life, in fee, or for years, in the same way as land. In America, the personal annuity seems to be the only kind known.

§ 2. **Perpetual, in fee, &c.**—A personal annuity may either be perpetual, for life, or for years, and a perpetual annuity may be limited either to the heirs or the executors of the grantee; in the former case it is an annuity in fee. When limited to the heirs of the body of the grantee it is an annuity in fee simple conditional, because the Statute *de Donis (q. v.)* does not apply to personal annuities. (Co. Litt. 20a, 144b; Wats. Comp. Eq. 8 *et seq.* See FEE.) A personal annuity in fee descends to the heir of the grantee on his death intestate, but it is nevertheless personal estate, and therefore would not pass under a devise of real estate.

ANNUITY, (an incorporeal hereditament). Reeve Dom. Rel. 19.

—— (distinguished from "legacy"). 14 Vr. (N. J.) 42; 7 Ves. 89.

—— (distinguished from "income"). 4 Bradf. (N. Y.) 151.

—— (distinguished from "rent-charge"). 23 Barb. (N. Y.) 216.

—— (devise of). 2 McCord (S. C.) Ch. 281; Cro. Jac. 144.

ANNUL.—In English law, to annul a judicial proceeding is to deprive it of its operation, either retrospectively or only as to future transactions. Thus, annulling an adjudication in bankruptcy puts an end to the proceedings, without invalidating any acts previously done by the trustee or the court, and makes the property of the bankrupt revert to him, unless the court otherwise orders. Bankruptcy Act, 1869, § 81.

ANNULUS ET BACULUS.—Ring and staff. Upon the investiture of a bishop the prince delivered to him a ring and staff, or crozier, and the investiture was said to be *per annulum et baculum*.—*Spel. Gloss.*

ANNUS DELIBERANDI.—The year of deliberation, during which, by the Scotch law, the heir may make up his mind whether

he will accept the inheritance, and represent his ancestor by entry on the lands of the latter.

ANNUS ET DIES.—A year and a day. By the common law the time for the performance of many acts, and the infliction of many forfeitures and penalties, is limited to a year and a day. In the law of homicide, if a mortal blow be struck, the offender cannot be convicted of murder unless the injured person die within a year and a day.

ANNUS LUCTUS.—The year of mourning. Among the Romans and Saxons the widow was not permitted to marry *infra annum luctus*. 1 Sharsw. Bl. Com. 457.

ANNUS UTILIS.—An available or serviceable year. A year made up of days in which acts may be done, rights exercised, or prescription grow. The plural expression, *anni utiles*, is used in respect of those years during which a statute of limitations has run against one under a disability or within an exception, during which the disability did not exist, or the exception could not be claimed.

ANNUUS REDITUS (or REDDITUS).—An annuity (*q. v.*); a yearly rent.

ANONYMOUS.—Without name. Books, essays, &c., whose authors' names are withheld, and reported cases which do not disclose the names of the parties, are called "anonymous."

ANOTHER, (A. B. and, in pleading). 1 Hill (N. S.) 370.

— (larceny of goods of, in a statute). 5 Blatchf. (U. S.) 360.

— (promise to pay debt of, in statute of frauds). 6 Cush. (Mass.) 553; Penn. (N. J.) 5, 98, 609, 618, 662, 685, 873, 976; South. (N. J.) 132, 149, 218, 249, 491, 570, 577; 3 Green (N. J.) 466. 14 Wend. (N. Y.) 246; 15 *Id.* 343.

* In ordinary actions in the English High Court an answer is an affidavit in answer to interrogatories; it is like any other affidavit in form, and requires to be filed, and, if longer than ten folios, printed. The answer necessarily follows the terms of the interrogatories, either giving information asked for, or admitting or traversing (denying) the allegations impliedly contained in them. If the party interrogated fails to answer, or to answer fully, he may be required to answer *visà voce*.

A petition in the Chancery Division is said to be answered when the Master of the Rolls' secretary writes on it a fiat or memorandum appointing the day on which it is to be heard. Dan. Ch. Pr. 1453.

In matrimonial suits in the Probate, Divorce and Admiralty Division, an answer is the pleading by which the respondent puts forward his defence to the petition. Browne Div. 223.

In ecclesiastical causes the defendant is said to answer the libel when he gives in an allegation. But in all civil causes the plaintiff is also

ANOTHER COUNTY, (jury to try a fact from). 3 T. R. 611.

ANOTHER EXECUTION, (in a statute). 120 Mass. 521.

ANSWER.—**ANG.-SAXON:** *andswara*, answer.

§ 1. **Generally.** A reply, or response to a charge or question; thus, a statement made by a witness in response to a question put to him, or by a person accused, in explanation or defence of the charge; also, an assumption of liability, as to answer for the debt or default of another.

§ 2. **In pleading.** The written statement of the defendant's case, setting forth the facts relied upon to constitute a defence to the charges contained in the plaintiff's bill, complaint, information, libel, or petition, filed or served by him against or upon the defendant, in a suit in admiralty or equity, or in an action under the reformed codes of procedure. Where a bill in equity seeks relief *e. g.* discovery, the answer contains the sworn examination of the defendant as to the matters charged in the bill, of which discovery is sought. The corresponding pleading in actions at law is the *plea*, which is also the name of a special answer in equity setting up new matter, as a cause why the suit should be dismissed, delayed or barred, and asking whether the defendant shall answer further. See PLEA.*

ANSWER, (in recognizance to appear). 10 Mod. 152, 153.

ANSWER BILL OF DISCOVERY, (covenant to). 1 Mad. Ch. 215.

ANSWER IN CHANCERY, (in rule of court). 10 Beav. 351.

entitled to what are called the personal answers of the defendant, which are answers on oath to the several articles of the libel. Phillim. Ecc. L. 1256, 1292.

Under the old chancery practice, in complicated cases, answers were frequently divided into two parts, one containing the defendant's statement, or the facts on which he relied, and the other giving his answers to the interrogatories. If no interrogatories were delivered, the defendant might put in a voluntary answer, containing such facts as he thought material to his case. (Hunt. Suit 43; Dan. Ch. Pr. 457; Mitf. Pl. 306.) A plaintiff's answer to a concise statement and interrogatories was similar to a defendant's answer to interrogatories, except that it was confined to giving the discovery required. (Hunt. Suit 49; Dan. Ch. Pr. 1406.) Every answer had to be signed by counsel, sworn by the party, and filed.

Under the old admiralty practice the defendant's first pleading was called his answer. Wms. & B. Adm. 246.

ANSWERABLE, (I agree to be). 6 Bing. 276.
ANSWERED, (in partition act). 33 Me. 100.

ANTAPOCHA.—A counterpart or duplicate of the *apocha* (*q. v.*)

ANTE EXHIBITIONEM BILLÆ.—Before the exhibition of the bill. Before suit begun.

ANTE-FACTUM, or **ANTE-GESTUM**.—Done before. A Roman law term for a previous act, or thing done before.

ANTE JURAMENTUM.—An oath required in old English law, of the accuser that he would prosecute, and of the accused that he was innocent.—*Jacob*.

ANTE LITEM MOTAM.—Before existing or anticipated litigation. See *LIS MOTA*.

ANTECESSOR.—An ancestor (*q. v.*)

ANTEDATE.—The dating of an instrument as of a time prior to that at which it was written.

ANTEDATED, (promissory note). 2 Harr. & J. (Md.) 329; 3 Green (N. J.) L. 255; 8 Serg. & R. (Pa.) 425; 2 Wheel. Am. C. L. 194.

ANTENATUS.—Born before a particular event. One born in this country before the declaration of independence (July 4th, 1776), as distinguished from *postnatus*, one born here since that date. The English view is that the American *antenati* owed allegiance to the king until the treaty of peace negotiable in 1783, but the American jurists do not concur in this view.

ANTENATI, (who are). 3 Hall L. J. 29; 7 Co. 1; 2 Kent Com. 40, 56, 58.

——— (real property rights of). 5 Day (Conn.) 171.

ANTE-NUPTIAL.—Before marriage. *Ante-nuptial settlements* are settlements of property upon the wife, or upon her and her children, made before, and in view of the marriage. Such settlements are now less frequent than formerly, owing to the recent laws extending the property rights of married women.

ANTICHRESIS.—An agreement in the civil law resembling a mortgage, by which a debtor surrendered to his creditor the income arising from the thing pledged to secure the loan, in lieu of interest upon the debt; except that under the French law if such income exceeded the lawful interest the borrower might claim the excess and hold the lender to account therefor.

ANTICHRESIS, (defined). 11 Pet. (U. S.) 351; 7 La. Ann. 526.

ANTICIPATION.—*LATIN*: *anticipatio*.

§ 1. **Of income**.—In conveyancing, *anticipation* is the act of assigning, charging

or otherwise dealing with income before it becomes due. A clause restraining anticipation is generally introduced in a settlement of property on a woman, in order to protect her from the influence of her husband by preventing her from depriving herself of the benefit of the future income. Such a restraint cannot be imposed in the case of anyone except a woman, and the restraint only exists so long as she is married. Hayes Conv. 499 *et seq.*; Snell Eq. 290; 1 White & T. Lead. Cas. 468; 11 Ch. D. 645.

§ 2. **In patent law**, a person is said to have been anticipated when he patents a contrivance already known within the United States.

ANTIGRAPHUS.—An officer whose duty it was, by the Roman law, to take care of tax money. A comptroller.

ANTINOMIA.—A term of the Roman law, used to designate a contradiction or inconsistency, real or apparent, between two or more laws.

ANTIQUA CUSTUMA.—Ancient custom. An export duty on wool and hides under the reign of Edward I.; so called to distinguish it from an increased duty upon the same articles, imposed by him at a later period of his reign, which was called *nova custuma*.

ANTIQUA STATUTA.—Ancient statutes. Acts of parliament from the time of Richard I. to that of Edward III.

ANTIQUUM DOMINICUM.—Ancient demesne (*q. v.*)

ANTITHETARIUS.—One who retorted an accusation upon his accuser.—*Cowell*; *Whishaw*

ANY, (in a covenant). 7 Dowl. & Ry. 556.
 ——— (in a deed). 3 Serg. & R. (Pa.) 392.
 ——— (in forgery statute). 3 Wheel. Cr. Cas 514.

——— (when means "all" in a statute). 16 How. (N. Y.) Pr. 83.

ANY ACT, (in a statute). Wilberf. Stat. L. 283, 284; 4 Halst. (N. J.) 128; 1 Binn. (Pa.) 279, 280, 286.

ANY ACTION, (in statute of appeal). 41 Conn 329.

ANY BONA FIDE PURCHASER, (in a statute) 35 Ohio St. 406.

ANY COURT OF RECORD, (includes what courts) 6 Co. 19.

ANY CREDITOR, (in bankrupt act). 7 Mass 227.

——— (in a deed). 5 Barn. & Ald. 869.

ANY ESTATE OR INTEREST, (in a statute). 2 Barn. & C. 133.

ANY MAGISTRATE, (commission issuing to). 9 Pick. (Mass.) 485.

ANY OF MY CHILDREN, (in a will). 1 P. Wms. 149.

——— (power given to). 1 Mad. Ch. 318.

ANY OF THEM, (in bond to perform award). 1 Brod & B. 350.

ANY ONE YEAR, (in a statute). 15 Pet. (U. S.) 160.

ANY OTHER MANNER, (in a statute). 9 Metc. (Mass.) 69.

——— (in a release). 4 Mas. (U. S.) 227.

ANY OTHER RELIGIOUS INSTITUTION OR PURPOSES, (in a will). L. R. 5 Ch. App. 570.

ANY PERSON, (in a charter). 7 Barn. & C. 838.

——— (in a statute). 3 Cranch (U. S.) 399;

3 Wheat. (U. S.) 631; 11 *Id.* 392; 22 Am. Rep. 529; 11 Gray (Mass.) 29; 34 Mich. 283; Coxe (N. J.) 275; 5 Cow. (N. Y.) 684.

ANY SUIT, (in a statute). 99 Mass. 236.

ANY TERM OF YEARS, (in a statute relating to additional punishment). 14 Pick. (Mass.) 40, 86, 94.

ANY TOWN, (to give license to exhume bodies). 8 Pick. (Mass.) 374.

ANY TWO OF THEM, (in submission to arbitration). South. (N. J.) 831; 7 Cow. (N. Y.) 290; 3 Wend. (N. Y.) 47.

ANY WILL OR CODICIL, (in a statute). Wilberf. Stat. L. 275, 276, 289.

ANYTHING DONE IN PURSUANCE OF THIS ACT, (in a statute). 10 Barn. & C. 277.

ANYTHING IN A FORMER ACT TO THE CONTRARY NOTWITHSTANDING, (in a statute). 11 Mass. 402.

APANAGE.—In old French law, a portion or provision set apart for the support of younger sons (generally of the royal family). This provision reverted to the donor and his heirs on the failure of male issue of the donee.

APARTMENT.—A part of a house; a room; one or more rooms in a house occupied by a person or family distinct and apart from the occupancy of the remainder of the house.

APARTMENT, (what is an). 7 Man. & G. 95; 6 Mod. 214; Woodf. L. & T. 178.

——— (what is not). 10 Pick. (Mass.) 293.

——— (of a prison). 9 Mass. 121; 10 *Id.* 190.

APERTA BREVIA.—Open, unsealed writs.

APERTUM FACTUM.—An overt act.

APEX JURIS.—The summit of the law; a subtlety, or extremely fine point of law; a rule of law carried to an extreme point, either of severity or refinement; a more rigid adherence to the letter of the law than called for by the phrase *summum jus* (*q. v.*)

Apices juris non sunt jura: Subtleties of law are not rules of law. This maxim is intended to limit and control, not to do away altogether with the allowance of technical objections.—*Broom Max.*

APICES LITIGANDI.—Extremely fine points, or subtleties of litigation. Nearly equivalent to the modern phrase "sharp practice." "It is unconscionable in a defendant to take ad-

vantage of the *apices litigandi*, to turn a plaintiff round and make him pay costs when his demand is just."—*Per* Ld. Mansfield, in 3 Burr. 1243.

APOCHA.—A civil law writing acknowledging the payment of money; a receipt or discharge; an acquittance of the debtor by the creditor. The word is nearly synonymous with *Acceptilation* (*q. v.*), but the latter word imports a discharge without payment, while *apocha* means discharge upon payment only.

APOCRISARIUS.—In ecclesiastical law, a person who answers for another; a messenger or officer sent with a message to the emperor and who took back his answer to the petitioners; an officer who gave advice on questions of ecclesiastical law; an ambassador or legate of a pope or bishop.

APOCRISARIUS CANCELLARIUS.—An officer who took charge of the royal seal and signed royal despatches.—*Bouvier*.

APOGRAPHIA.—A civil law term signifying an inventory or enumeration of things in one's possession.—*Calv. Lex.*

APOLOGY.—In England, when an action is threatened or brought against a person for a libel published in a newspaper, he may plead that it was inserted without actual malice, and without gross negligence, and that an apology for the libel has been published; he may also pay a sum of money into court as amends to the plaintiff. (*See* PAYMENT INTO COURT.) Any person sued in an action for defamation may plead in mitigation of damages that he has made or offered an apology to the plaintiff. Stat. 6 and 7 Vict. c. 96.

APOSTASY, in English law, is a total renunciation of Christianity by one who has been educated in or professed that faith within the realm. It is punishable by incapacity to hold any office, and for the second offence, by incapacity to bring any action or to be guardian, executor, legatee or grantee, and by imprisonment for three years. (Stat. 9 and 10 Will. III. c. 35; 4 Steph. Comm. 201. *See* HERESY.) This is not a punishable offence in the United States.

APOSTATA CAPIENDO.—An English writ (obsolete) for the capture of an apostate, or one who had left or violated the rules of a religious order of which he was a member. It commanded the sheriff to arrest and return the defendant to his abbot or prior.—*Reg. Orig.* 71, 267.

APOSTLES.—In admiralty practice, brief letters, dismissory or missive, sent by the court *a quo* to the appellate court, stating the case, proceedings had and sentence, and declaring that the record will be transmitted. This term is still, though seldom, used in America to designate the papers constituting the record on an appeal in admiralty.

APOSTOLI.—Letters dismissory or missive. *See* APOSTLES.

APOSTOLUS.—A messenger; an ambassador, legate or nuncio.—*Spel. Gloss.*

APOTHECARY, (defined). 14 U. S. Stat. at L. 119.

APPARATOR.—A furnisher or provider. Formerly the sheriff, in England, had charge of certain county affairs and disbursements, in which capacity he was called *apparator comitatus*, and received therefor a considerable emolument.—*Cowell.*

APPAREL, (in exemption law). 10 Metc. (Mass.) 506; 33 N. H. 345; 4 C. E. Gr. (N. J.) 316. *See* BAGGAGE.

APPARENT.—*LATIN:* *apparere*, to appear.

That which appears, or is manifest; that which is proved, or is regularly before the court. Thus, a demurrer lies for defects *apparent* on the face of the pleading demurred to. *See* DE NON APPARENTIBUS, &c.

APPARENT DANGER, (in law of self defence). 44 Miss. 762.

APPARENT GOOD ORDER, (in bill of lading.) 1 Sawy. (U. S.) 176.

APPARENT HEIR.—*See* HEIR APPARENT.

APPARENT POSSESSION, (in bill of sale act). L. R. 6 Ex. 1.

APPARITIO.—An appearance (*q. v.*)

APPARITOR.—*LATIN:* *apparere*, to appear.

Apparitors are so-called from the principal branch in their office, which consists in summoning persons to *appear*. They are officers of the ecclesiastical courts appointed to execute the proper orders and decrees of the court. *Phillim. Ecc. L.* 1246.

APPARURA.—In old English law the apparura were furniture, implements, tackle or apparel. *Carucarum apparura*, plough-tackle.—*Cov. & L.*

APPEAL.—Appeal, in the sense of a criminal proceeding, comes from the Norman-French *apel*, from *appeler*, to accuse, (*Britt.* 38 b.) from the Latin *appellare*, to call upon. Appeal, in the modern sense, seems to have come direct from the Latin *appellare* (which has the same meaning. *Dig. xlix.*) through the ecclesiastical courts. (*Co. Litt.* 287 b.) Its use in the temporal courts seems quite modern, the old terms being "error" and "rehearing."

§ 1. **General meaning.**—In its most general sense an appeal is a proceeding taken to rectify an erroneous decision of a court by submitting the question to a

higher court or court of appeal. (*See* COURT.) The term "appeal," therefore, includes, in addition to the proceedings specifically so-called, the "cases stated" for the opinion of the court, under various statutes (*see* CASE) and proceedings by writ of error or certiorari. (*See* CERTIORARI; ERROR.) But strictly and practically there are plain distinctions. Thus, an appeal removes the whole case, the facts as well as the law, whereas a writ of error is a common law process, and a certiorari a statutory one, for the removal of questions of law only.

§ 2. **Procedure.**—The general course of procedure on appeal requires (1) an application by the party aggrieved to the appellate court to rehear his cause; (2) the allowance of the appeal by the higher court; (3) the citing of the adverse party to appear in the appellate court by service of the notice of appeal, notice of argument, &c.; (4) the obtaining from the lower court, and filing in the higher court, the papers constituting the record (*q. v.*) of the case; and (5) the argument or hearing before the court in banc. Inasmuch as the appeal, when perfected, generally annuls the judgment appealed from, so that the party hitherto successful can take no action to enforce it pending the appeal, the statutes generally require the appellant to give a bond or undertaking conditioned for the payment or performance of the judgment to be finally rendered by the appellate court, or, in default of such security, the respondent may proceed to enforce his judgment; but, in the latter case, he does so at his peril, for in case of the reversal of the judgment, he may be compelled to make restitution, and perhaps be liable also in damages. The statutes of the several States regulating the right to appeal, and the subsequent procedure, are so numerous, and differ so greatly, that space cannot be afforded them here—the English practice is outlined below.*

* *Court of Appeal.*—In the Supreme Court of Judicature, every appeal from a judgment or order of the High Court to the Court of Appeal is in the nature of a rehearing, and is brought by a simple motion in the Court of Appeal, asking that the judgment or order complained of may be reversed, discharged or varied. (*Sm.*

Ac. 214; *Rules of Court* lviii.) Appeals can also be brought on interlocutory proceedings in chambers, from the master, chief clerk or district registrar, to the judge in chambers. In the Common Law Divisions, an appeal lies from the judge in chambers to the Divisional Court, and thence to the Court of Appeal (*Rules of Court*

§ 3. **Appeal of felony.**—Formerly appeal (or “appeal of felony”) signified a criminal proceeding, being an accusation by one private subject against another for some heinous crime demanding punishment, rather on account of the particular injury suffered by the individual than for the offence against the public. (4 Bl. Com. 312.) Appeals were of three classes, namely, by an heir for the death (by murder or homicide) of his ancestor, by a wife for the death of her husband, and by the appellant for a wrong done to himself or herself, as robbery, rape, mayhem, &c. The judgment on a conviction on an appeal was the same as on a conviction on an indictment (except in the case of mayhem, for which damages only could be recovered); but an appeal was so far considered a private action that it could be released by the party injured. (Co. Litt. 123 b, 287 b; Litt. §§ 500 *et seq.*; 4 Bl. Com. 316.) Appeals were abolished by Stat. 59 Geo. III. c. 46.

§ 4. **In legislation.**—Where a ruling or decision of the officer presiding in a legislative, or other public body, is unsatisfactory to a member, he may appeal to the vote of the whole body. This is called an “appeal from the decision of the chair.” The objection is taken *viva voce* in the same manner as an ordinary motion is made, and a vote is then taken (with or without debate, according to the nature of the matters involved in the appeal, *see* Cush. Par. L.) upon the question whether the

decision of the chair be sustained. If the majority vote “nay” the ruling appealed from is reversed.

APPEAL, (defined). 3 Dall. (U. S.) 327; 2 Abb. (N. Y.) Pr. 127.

— (comprehensive meaning). 1 Gall. (U. S.) 5, 12; 2 Abb. (N. Y.) Pr. 126; 11 How. (N. Y.) Pr. 400.

— (agreement not to). 4 Mass. 516.

— (distinguished from “writ of error”).

3 Dall. (U. S.) 321; 7 Cranch (U. S.) 108.

— (from a justice, a *supersedeas*). 12 Wend. (N. Y.) 584.

— (in a statute). 13 Vr. (N. J.) 591.

— (in U. S. Judiciary Act). 7 Cranch (U. S.) 110.

— (when does not lie). 1 Gall. (U. S.) 5.

APPEAR AND ADVOCATE, (in a statute). 9 Johns. (N. Y.) 352.

APPEAR AND ANSWER, (in a statute). 1 Wend. (N. Y.) 464.

APPEAR BY AFFIDAVIT, (in service by publication). 5 Minn. 367.

APPEARANCE.—LATIN: *apparitio*.

§ 1. **Generally.**—In the primary sense of the word the parties to a proceeding or application (*e. g.* a petition, motion, &c.) are said to appear in it when they are present before the court, judge, &c., when it is heard. A party appears either in person or by his attorney, counsel or solicitor.

§ 2. **Entry of appearance.**—In the

liv. 4, 5, 6, xxxv. 7); while in the Chancery Division, the judge in chambers may either direct the matter to be argued before him in court (after which an appeal lies to the Court of Appeal), or may give leave to appeal direct to the Court of Appeal. 9 Ch. D. 243.

House of Lords.—Appeals to the House of Lords are brought by petition of appeal, which is lodged by the appellant at the Parliament Office, and presented to the House at its next meeting by the Lord Chancellor or Clerk of the Parliaments, after which an order requiring the respondent to lodge his printed case is issued and served on him. If he intends to contest the appeal, he enters an appearance, and the appellant gives security for costs. Each party then lodges a printed case stating the facts and reasons in his favor, and an appendix is also prepared containing printed copies of the documents and other evidence used in the court below. Appellate Jurisdiction Act, 1876; Standing Orders and Instructions (issued by the House of Lords), May, 1878; Den. & S. Pr. & Pro. *passim*.

Privy Council.—In appeals to the Privy Council leave to appeal has in most instances to be obtained either from the court below or from the Judicial Committee, and security given for the costs of the appeal. The appellant then causes a transcript of the pleadings and evidence in the court below to be transmitted to the Colonial Office, with the reasons assigned by the judges for the decision appealed from. The appellant also prepares and lodges his petition of appeal,

giving a short abstract of the proceedings. The respondent being generally aware of the appeal having been lodged, he ought to enter an appearance, and then both parties prepare their cases, and an appendix containing the material documents, &c. The cases and appendix are printed. If the respondent does not appear, two successive notices to him to do so are posted at the Royal Exchange and Lloyd's Coffee House, or the appeal is brought to his knowledge in some other way, and if he still fails to appear, the appeal is heard *ex parte*. Macph. P. C. Pr. *passim*.

Inferior Courts.—Appeals from Inferior Courts to the High Court are generally brought in one of two ways, either by a case or special case stated for the opinion of the Appellate Court (Poll. C. C. Pr. 238), or by a motion to the Appellate Court. (*Id.* 242.) As to appeals in ecclesiastical cases, *see* Phillim. Ecc. L. 1264 *et seq.*

Appeal Deposit Account.—Under the former practice of the Court of Chancery, when a party wished to appeal or have a rehearing, he had to deposit £20 as security for the costs of the opposite party, in case he was unsuccessful. These deposits were paid into the Bank of England to the above account, and were supposed to be paid out again on the termination of each appeal; but as it frequently happened that the parties forgot all about them, a considerable sum has accumulated on the account. Dan. Ch. Pr. 1350; Stat. 15 and 16 Vict. c. 87; Report of Chancery Funds Commissioners (1864) xliv.

secondary sense of the word, appearing, or entering an appearance, is a formal step taken by a defendant to an action after he has been served with the writ or summons: its object is to intimate to the plaintiff that the defendant intends to contest his claim, or, in a friendly action, to take part in the proceedings in the action. (*See* DEFAULT.) In some cases persons may appear who are not defendants to the action, *e. g.* persons desiring to intervene in probate and admiralty actions (*see* INTERVENTION), or in actions for the recovery of land, and persons cited to appear. *See* CITATION; COUNTERCLAIM.

§ 3. **Notice of appearance.**—Appearance is generally effected by delivering to the attorney for the plaintiff (or to the proper officer of the court), a memorandum or notice giving the title of the action, stating that the defendant appears in person or by his attorney or solicitor, as the case may be, giving the address of himself or his attorney, and stating whether he requires a declaration, complaint or statement of claim to be delivered. In England, the defendant must also produce a duplicate memorandum for sealing, which he afterwards sends to the plaintiff. *Sm. Ac. 54 et seq.*

§ 4. **Limited, or qualified appearance.**—Special forms of appearance are used in actions for the recovery of land; thus, any person appearing in such an action may by his appearance limit his defence to a part of the property. So, in ordinary actions, where a general appearance would have the effect to waive an irregularity in the procedure, a defendant desiring to question it may enter a limited or special appearance, designating the particular purpose for which he appears.

§ 5. **Conditional appearance.**—In chancery practice, where a defendant desires to object to the regularity of the proceeding by which the plaintiff seeks to compel his appearance, he must enter a conditional appearance, and then apply to the court to set aside the plaintiff's proceeding. This is the proper course to pursue if a plaintiff irregularly obtains an order for substituted service of a writ on the defendant. (*Dan. Ch. Pr. 459.*) As to appearing gratis, under the old practice, *see* *Id.* 462.

§ 6. **Failure to appear.**—If a defendant does not appear the plaintiff may in some cases enter judgment, and in other cases proceed with his action. *See* DEFAULT; JUDGMENT.

§ 7. **In bailable process.**—Appearance has a peculiar meaning in bailable process (*see* BAIL; BAILABLE), where, to effect a complete appearance, the defendant is required to give *bail to the action*, that is, to provide sufficient sureties, who enter into a recognizance to the effect that if judgment be given against him he shall either satisfy the plaintiff or render himself to prison, the ordinary kind of appearance was called "common appearance" by way of distinction.

§ 8. **What amounts to an appearance.**—Anciently, the corporal appearance of the parties before the court was essential to the further prosecution of the litigation, and was compellable by process, but in modern times an appearance by attorney, as indicated *supra* §§ 2, 3, is sufficient, (save in the cases of infants, lunatics and married women, who must often appear in person or by their next friend, *see* GUARDIAN AD LITEM; PROCHIEU AMI); and almost any step taken by a defendant after the service of the writ or summons upon him, which may be deemed to imply a submission upon his part to the jurisdiction of the court, will be held a good and sufficient appearance. Thus, applying for and obtaining an extension of time to answer; serving papers indorsed by his attorney *as such*; making a motion in the case; serving his answer, &c., have been respectively held equivalent to an appearance; and, in all cases on contract, a judgment by default may be taken where there is no appearance.

§ 9. **The different kinds.**—An appearance is **compulsory**, when made in consequence of the service of process to compel appearance; **conditional**, when coupled with conditions as to becoming general (*see supra* § 5); **general**, when absolute and unconditional; **gratis**, when made by one not yet notified to appear or served with process; **optional**, when made by one under no obligation to appear, but who does so in order to save his rights; **special**, when made for some specific purpose, and not for all the purposes of the suit (*see supra* § 4); **subsequent**, when made by a defendant whose appearance has already been entered for him by the plaintiff; **voluntary**, when made in

answer to a subpoena or summons, without process.

APPEARANCE, (of an attorney). 13 Serg. & R. (Pa.) 164.

— (in a recognizance). 6 Serg. & R. (Pa.) 428.

— (in a statute). 2 Johns. (N. Y.) 381; 7 Wend. (N. Y.) 133.

— (in justice's court). 1 Green (N. J.) 349.

APPEARANCE WELL FOUNDED, (a rumor). 2 Wheel. Cr. Cas. 81.

APPEARED, (in answer of witness to interrogatory). 7 Wheat. (U. S.) 153.

— (in partition act). 33 Me. 100.

APPELLANT.—The party to an action who takes an appeal from a judgment or order, to a higher court. The party against whom the appeal is taken is called the "appellee" or "respondent."

APPELLATE.—Pertaining to, or having cognizance of appeals, and other proceedings for the judicial review of adjudications.

APPELLATE COURT.—A court of appeal; a court to which causes are removable by appeal, certiorari or error.

APPELLATE JURISDICTION.—Jurisdiction on appeal; power or jurisdiction to rehear a cause already tried in an inferior court, either on appeal, certiorari or writ of error.

APPELLATE JURISDICTION, (defined). 1 Cranch (U. S.) 175.

— (distinguished from "supervisory"). 70 Cal. 211.

APPELLATIO.—An appeal, or removal of a cause from an inferior to a superior tribunal or judge.

APPELLATOR.—An old law term having the same meaning as "appellant" (*q. v.*)

APPELLEE.—The party against whom an appeal is taken; the party opposing or answering to the appeal, and defending the judgment appealed from. Often termed "respondent" (*q. v.*)

APPELLOR.—In old English law, a criminal who accuses his accomplices; or who challenges a jury.

APPENDAGE, (of a railroad, what is). 4 Dutch. (N. J.) 26.

APPENDANT.—LATIN: *ad*, to, and *pendere*, to hang.

Appendant is often used in the same sense as "appurtenant" (*q. v.*), that is, to

signify that a hereditament is annexed to another: "appendant is any inheritance belonging to another that is more superior or worthy." (Co. Litt. 121 b, where an instance is given of a thing corporeal being appendant to a thing incorporeal, namely, lands appendant to an office.) And the difference between appendant and appurtenant is merely one of name, appendant being applied to some things and appurtenant to others. Historically, the difference seems to be that rights which were originally created by implication of law and annexed to estates in land are properly called appendant, and all others appurtenant. Thus, common appendant is the right which socage tenants of a manor have by the common law to feed their beasts on the wastes of the manor, while common appurtenant is a right gained from the lord by grant or prescription. (Burton Comp. R. P. § 1133; *Elt. Com.* 14, 47, 88.) So, an advowson or seignory is said to be appendant to a manor (*Wms. Real Prop.* 322), because it is created and annexed to the manor by implication of law. Ultimately, no doubt, the origin of common appendant and similar rights may be traced back to the old villis or village communities. (*Wms. Com.* 39.) A corporeal hereditament cannot be appendant to another corporeal hereditament, nor an incorporeal to an incorporeal. See APPURTENANT; REGARDANT; IN GROSS.

APPENDANT, (defined). 1 Chit. Gen. Pr. 153; 1 Com. Dig. 651, 652; Co. Litt. 121 b; 8 Barn. & C. 150; 7 Mass. 6.

— (in a declaration). *Yelv.* 159.

— (in a lease). 6 Bing. 150.

— (to a rectory). 1 Ld. Raym. 199.

APPENDANTS; APPURTENANCES, (distinguished). 1 Johns. (N. Y.) Cas. 291.

APPENDITIA.—The appendages or appurtenances of an estate or house.—*Cowell.*

APPENDIX.—In the practice of the English House of Lords and Privy Council in appeals, the appendix is a printed volume containing the material documents or other evidence used in the court below, and referred to in the cases of the parties. Standing Orders of House of Lords in Appeals; *Macph. Jud. Com.* 84, 237.

APPENNAGIUM.—An appendage; the portion of a younger son.—*Spelm. Gloss.*

APPENSURA.—Payment of money by weight instead of by count.—*Cowell.*

APPERTAINING.—**LATIN:** *ad, to, and pertinere, to reach to.*

A purtenant, or belonging to. *See* APURTENANT.

APPERTAINING, (defined). 1 Bing. 483.

— (lands, in a devise). 1 P. Wms. 603.

APPLIABLE, (in constitutional provision). 8 Nev. 322.

APPLICANT, (in attachment act). 2 Green (N. J.) 441; 6 Halst. (N. J.) 173.

— (in road act). Penn. (N. J.) 643.

Applicatio est vita regulæ: The application is the life of the rule.

APPLICATION.—**LATIN:** *applicare, to join, fix or attach to.*

(1) A request—more strictly a request in writing made to some one in authority, as an application to the court for a rule or order; to the executive for a pardon; or to an insurance company for a policy (*see* INSURANCE). (2) The appropriation or disposition of words or things to some particular use, purpose, or subject-matter, as to apply a sum of money paid on account to one of two or more debts; or to apply the words of a will or other instrument to the subject-matter affected by it.

APPLICATION, (for a survey). 5 Serg. & R. (Pa.) 219.

— (for appointment of guardian). 3 Day (Conn.) 279.

— (for life policy). 25 Minn. 534.

— (in rule of court). 7 Ch. D. 241.

— (of fund). 4 Cranch (U. S.) 320.

— (for relief of persons imprisoned for debt). 7 Halst. (N. J.) 296.

— (of payments). 6 Cranch (U. S.) 27; 7 *Id.* 572; 1 Dall. 124; 1 Mas. (U. S.) 338; 7 Wheat. (U. S.) 14, 20; 15 Wend. (N. Y.) 23; 4 Wheel. Am. C. L. 163; 6 *Id.* 375; 7 *Id.* 281; Cro. Eliz. 68; Ld. Raym. 286; 2 Str. 1194; 1 Vern. 469.

APPLIED, (in agreement that shares of stock shall be). 3 Duer (N. Y.) 426.

— (money shall be, in statute). 5 Halst. (N. J.) 67.

APPLY, (in statute of uses). 2 N. Y. 309.

APPLY TO THE USE OF, (in a statute). 16 Wend. (N. Y.) 156, 266.

APPOINT, (in a deed). 5 T. R. 124.

— (in a statute). 68 N. Y. 514.

— (to an office). 1 Binn. (Pa.) 77.

APPOINT ATTORNEYS UNDER HIM, (in power of attorney). 7 Wheel. Am. C. L. 398, *n.*

APPOINT ESTATES, (power to, in a will). 18 Wend. (N. Y.) 271.

APPOINTED, (in a commission). 3 Hen. & M. (Va.) 40.

— (in a letter of instructions). 2 Car. & P. 223.

— (in an act of congress). 17 Serg. & R. (Pa.) 227.

— (officer). 7 Wheel. Am. C. L. 142.

APPOINTEE.—(1) A person appointed for a particular purpose, or to hold a particular office or trust. (2) A person in whose favor a power of appointment is executed.

APPOINTING POWER, (exercise of, what is). 8 Am. Rep. 24.

— (in constitution of Ohio). 21 Ohio St. 14.

APPOINTMENT.—**FRENCH:** *appointment.*

The act of designating a person for a certain purpose, *e. g.* to an office or as trustee, or to take an estate or interest in property under a power of appointment. *See* POWER.

§ 1. **Under power.**—An appointment of the latter kind takes effect as if the estate limited by the power had been created by the instrument which conferred it. Thus, if A. conveys land to such uses as B. shall appoint, and B. appoints to himself for life, with remainder to his eldest son, this has the same effect as if A. had originally conveyed the land to B. for life with remainder to his eldest son. But with regard to the rule against perpetuities, there is a distinction between general and particular powers, for under a general power the donee can appoint in any manner he pleases, while under a particular power (that is, a power to appoint to one or more of a limited number of persons), no estate can be created if it would have been invalid in the original deed by reason of its infringing the rule against perpetuities. Sugd. Pow. 396, 470; Wms. Sett. 43; 2 Dav. Conv. 176. *See* PERPETUITY.

§ 2. **Exclusive.**—An appointment to one or more of the objects of a particular power to the exclusion of the others is called an exclusive appointment.

§ 3. **Illusory.**—Formerly an appointment of a merely nominal share of the property to one of the objects, in order to escape the rule that an exclusive appointment could not be made unless it was authorized by the instrument creating the power, was considered illusory and void in equity, but this rule has been abolished. Sugd. Pow. 449; Wms. Sett. 153; Stat. 2 Geo. IV. an 1 Will. IV. c. 46, and 37 and 38 Vict. c. 37.

§ 4. **Excessive.**—An appointment is excessive when it is made to persons not objects of the power, or for a greater estate or interest than is permitted by it, or subject to conditions unauthorized by it. (Sugd. Pow. 498; Wats. Comp. Eq. 827.) As to the defective execution of a power, *see* EXECUTION; AID, § 2.

§ 5. Distinguished from "election," or "nomination."—Appointment to an office or trust implies the conferring of the dignity by the act of one or more individuals having power to select the person appointed—"election" is the selection of the person by the votes of an entire class; and "nomination" is merely a preliminary or advisory designation, of no effect until confirmation or election.

APPOINTMENT, (by governor, what amounts to). 1 T. B. Mon. (Ky.) 82.

— (by justices, to hold sessions). 2 Ld. Raym. 1238.

— (by president, what amounts to). 19 How. (U. S.) 73, 79.

— (continuance in office equivalent to). 2 Day (Conn.) 528; 3 Id. 163.

— (in a letter of appointment). 17 Serg. & R. (Pa.) 220, 227.

— (in a will). 3 N. Y. 93, 119.

— (in charter of a bank). 12 Serg. & R. (Pa.) 306.

— (of a schoolmaster). 2 Crompt. & J. 636.

— (of money, means "appropriation"). 3 N. Y. 93, 119.

— (prolongation of term of office not an). 22 N. Y. 128.

— (to office). 1 Cranch (U. S.) 155, 161.

— (when "election" is equivalent to). 45 N. Y. 446. But see 3 Met. (Ky.) 210.

APPOINTMENTS, (degrees conferred by colleges are not). 3 Whart. (Pa.) 456.

APPOINTOR.—One authorized by the donor of a power, to execute the same. 2 Bouv. Inst. 1923.

APPORTION—APPORTIONABLE—APPORTIONMENT.—

To apportion a thing is to divide it with reference to the interests of two or more persons.

§ 1. Apportionment of rent is either in respect of contemporaneous or successive interests. An instance of the latter occurs where a lessor of land dies intestate: here the rent received on the first rent day after his death is divided so that his personal representatives take the part due in respect of the period between the preceding rent day and the death, and the heir takes the amount due in respect of the period between the death and the following rent day. An instance of apportionment in respect of contemporaneous interests occurs where a reversion expectant on a lease devolves by law on several persons; here the rent is divided between

them, according to their interests. (Lew Ap. 2.) But consult the local statutes on this subject.

§ 2. Of incumbrances.—The determination of the respective amounts which several persons interested in an estate shall contribute towards the removal of an incumbrance, or to the payment of the pecuniary burden it imposes on the estate.

§ 3. Of contracts.—A contract is said to be apportionable when the acts required to be done under it are so distinct that if one is performed without the others, the party performing it has the right of enforcing the contract pro tanto against the other party. Thus, if A. enters into a contract to supply machinery to B. for a certain price, and to keep it in order for a yearly payment, he becomes entitled to recover the price of the machinery as soon as he delivers it, without waiting for the performance of the rest of the contract. (5 Ch. D. 205.) Annuities are not apportionable at common law (but are in some States by statute), nor are wages apportionable where the hiring is for a definite period of time. See ENTIRE; SEVER.

§ 4. Of condition.—At common law a condition of re-entry in a lease was said not to be apportionable by act or agreement of the parties; that is, if the lessor granted a license to the lessee to do the act forbidden by the condition, or waived a breach already committed, the condition was gone forever, although the license or waiver was expressed to be limited to a particular act, or to a part of the land. (4 Co. 119; 1 Sm. Lead. Cas. 41.) This absurd rule was abolished in England by Stat. 22 and 23 Vict. c. 35, and 23 and 24 Vict. c. 38.

§ 5. Of commons.—The general rule is, that common appendant and appurtenant are apportioned by alienation of part of the land to which the common is appendant or appurtenant, so that each person may exercise his right of common in respect of his portion of the land. (Co. Litt. 122a; Wms. Comm. 183.) When it is said that if a man, having a common appendant, purchase part of the land over which the common exists, the common shall be apportioned, but not so in the case of any other common, the meaning is that in the case of common appendant the commoner continues to have a right of common over the portion of the land which he has not purchased, while in the case of any other common his right of common is wholly destroyed by the partial unity of possession. (Co. Litt.

122a; 4 Co. 36b; *Elt. Comm.* 120; *Wms.* 166.) It is not clear whether this is now good law.

§ 6. Of representatives.—The determination upon each decennial census of the number of representatives in congress which each State shall elect, the calculation being based upon the population. (*See U. S. Const. Art. 1, § 2.*) The constitutions of the several States provide for a similar apportionment of members of the legislature from the several counties and cities.

§ 7. Of corporate shares.—The *pro tanto* division among the subscribers, of the shares allowed to be issued by the charter, where more than the limited number have been subscribed for. *See ALLOT, § 3.*

APPORTION, (rent under a lease). 1 *Swanst.* 338, n. (a).

—— (stock, in the charter of a bank). 1 *Edw.* (N. Y.) 368.

APPORTIONMENT, (of rent). 10 Co. 128; 23 *Wend.* (N. Y.) 643; 15 *Id.* 464; 3 *Kent. Com.* 469–70; *Cro. Eliz.* 622, 771.

—— (of rent, when may be demanded). 22 *Wend.* (N. Y.) 121; 24 *Id.* 76; 25 *Id.* 456.

—— (of stock, how made). 1 *Edw.* (N. Y.) 368; 1 *Johns.* (N. Y.) Ch. 18; 15 *Wend.* (N. Y.) 412.

—— (of taxation). 3 *Dall.* 174.

APPORTUM.—An old English law term for anything brought or carried to another, as a profit or emolument; particularly for the support of a religious person. A corody or pension. —*Burrill.*

APPOSAL OF SHERIFFS.—The charging them with money received upon their account in the Exchequer. *Stat.* 22 and 23 *Car.* II.—*Cowell.*

APPOSER.—An officer in the Exchequer, clothed with the duty of examining the sheriffs in respect of their accounts. Usually called the “foreign apposer.”—*Termes de la Ley.*

APOSTILLE, or APOSTILLE.—In French law, an addition or annotation made in the margin of a writing.—*Merl. Répert.*

APPRAISAL.—*See APPRAISEMENT.*

APPRAISE.—*LATIN: ad, to, and pretium, a price.*

To fix or ascertain the value of a thing; to state a thing's just value, usually in writing; to estimate at a fair price, by virtue of a conferred authority so to do.

APPRAISED BY A. AND B., (agreement that goods shall be). 13 *Wend.* (N. Y.) 95.

APPRAISED BY TWO PERSONS INDIFFERENTLY CHOSEN BY THE PARTIES, AND IN CASE OF THEIR DISAGREEMENT, BY A THIRD PERSON TO BE CHOSEN BY THE TWO, (in a lease). 2 *Johns.* (N. Y.) Ch. 351.

APPRAISED IN MONEY, (half of my estate, in a will). 2 *Root* (Conn.) 271.

APPRAISEMENT.—A valuation of property made by judicial or legislative authority. A writ or commission of appraisal is one commanding the persons to whom it is directed to ascertain and return (*i. e.* report) the value of certain property; as the appraisal of dutiable goods in cases of smuggling, or where the value of the goods is a question of difference between the importer and the government, or where goods are forfeited, &c.

§ 2. In admiralty.—In an admiralty action *in rem*, an official appraisalment of the property proceeded against is made by the marshal under a commission or order of the court, either where bail is to be given for the value of the property, or where it is to be sold. *Rosc. Adm. Pr.* 113, 187. *See EXTENT.*

§ 3. Other cases.—So, in cases of insolvency, intestacy, bankruptcy, &c., an appraisalment is frequently, in fact almost always necessary, and an inventory (*q. v.*) of the several articles or assets belonging to the estate of the insolvent, intestate or bankrupt, made and filed in the proper place. And where property is taken by reason of public necessity, or in the exercise of the right of eminent domain (*q. v.*), an appraisalment of it is made in order to ascertain the amount to be paid to the owner by way of compensation. So, where a lease contains a covenant for a renewal, there is often a provision that the amount of rent to be paid under the renewal shall be determined by appraisalment, on the basis of the value of the land at the time of the expiration of the original lease.

APPRAISEMENT, (of distrained goods). 1 *Wheel. Am. C. L.* 446.

—— (of real estate). 2 *Root* (Conn.) 273; 2 *Pick.* (Mass.) 382.

APPRAISER.—A person legally authorized to make an appraisalment (*q. v.*)

APPRAISER, (in a statute). *Wilberf. Stat. L.* 134; 5 *Mau. & S.* 240.

APPRAISERS, (defined). 39 *Iowa* 192.
—— (in a statute). 2 *Pow.* 519; 2 *Green* (N. J.) 437.

APPREHEND—APPREHENSION.—LATIN: *apprehendere*, to take hold of.

To apprehend a person is to seize him for the purpose of taking him before a magistrate to answer for some offence alleged to be committed by him. Apprehension is either with or without a warrant. In civil cases the word is not used, "arrest" being the proper term. The latter word, however, is equally applicable to civil and criminal cases. See **ARREST**; **WARRANT**.

APPREHENDED, (in crimes act). 4 Cranch (U. S.) 75.

APPRENTICE.—Probably from Latin, *apprehendere*, to grasp; to learn. There is some doubt, however, as to this being a correct derivation. See Smith's Wealth of Nations, book 1, ch. 10.

A species of servant, usually a minor, legally bound to serve another (generally an artisan or tradesman) for a given length of time, in consideration of instruction by his master in his art, trade or business. (1 Bl. Com. 426; 2 Kent Com. 261.) Formerly, in England, no person could exercise a trade without having first served as an apprentice, but this is no longer the law there, and it is not the law in America.

APPRENTICE, (defined). 2 Dall. (U. S.) 198; Penn. (N. J.) 425, 847; 1 Harr. (N. J.) 537; 2 Browne (Pa.) 210; 2 East 302.

— (binding of). 1 Green (N. J.) 223.
— (execution of indenture by). 8 East 26; 9 Id. 295.

— (in a contract of apprenticeship). 8 T. R. 383.

— (not a servant). 3 Rawle (Pa.) 306.
— (when includes articulated clerk). Wilberf. Stat. L. 138.

APPRENTICE EN LA LEY.—An ancient name for students at law, and afterwards applied to counselors, *apprentici ad barras*, from which comes the more modern word "barrister" (*q. v.*)

APPRENTICE TO A NOTARY, (in an act of parliament). 10 Barn. & C. 511.

APPRENTICESHIP.—The *status* of an apprentice; the relation subsisting between an apprentice and his master; the contract between them; also the term during which the apprentice is bound to serve. The contract is usually embodied in an indenture (*q. v.*) entered into by the apprentice, his parent or guardian, and the master, and approved by a magistrate. It obligates the master to maintain the

apprentice and teach him his trade or business, and binds the apprentice to learn and serve with fidelity, for a certain term of years, usually until the majority of the apprentice, if a male, or until the age of eighteen, if a female. The master, during the term, stands very nearly *in loco parentis*, both as respects authority over the apprentice and responsibility for his acts and conduct, and for his acquirement of skill in his craft. These are general principles everywhere applicable; for more full and definite information the statutes of the several States should be consulted.

APPRENTICESHIP, (American meaning). 16 Fla. 306.

— (of pilot, under statute). 16 Fla. 306.

APPRENTICIUS AD LEGEM.—An apprentice to the law; a law student; a counselor below the degree of serjeant; a barrister. See **APPRENTICE EN LA LEY**.

APPRISING, or **APPRIZING.**—A former process in Scotch law by which the creditor obtained possession of the lands of the debtor in payment of his debt. It is now superseded by the process called "adjudication" (*q. v.*)

APPROACH.—In international law, the right of visitation on the high seas, for the purpose of determining to what nation the vessel approached belongs. 1 Kent. Com. 153, *n.* See **SEARCH**.

APPROBATE AND REPROBATE.—To approve and reject. A Scotch law term equivalent in meaning to the English and American word "election" (*q. v.*)

APPROBATION, (of investment). 2 Pet. (U. S.) 607.

APPROBATION OF THE COURT, (in a statute). South. (N. J.) 118.

APPROPRIATE—APPROPRIATION.—LATIN: *ad*, to, and *proprius*, belonging.

§ 1. **In general.**—In the primary sense of the word, to appropriate is to make a thing the property of a person. Thus, to appropriate a thing which is *publici juris* is to obtain a right to the exclusive enjoyment of it, (5 Barn. & Ad. 1), so that the appropriator becomes the owner. See **OCCUPANCY**.

§ 2. **In sale of goods.**—Where a person is entitled to goods or moneys which form part of a larger quantity and are not distinguished, and afterwards the goods or moneys to which he is entitled are sepa-

rated from the rest and set apart for him, they are said to be appropriated. Thus, if A. sell to B. 1000 bricks, to be selected and taken away by B. from a certain stack, then, as soon as B. has selected and taken away 1000 bricks, they are appropriated to him, and the sale, which before was executory, is now complete. Benj. Sales 264; L. R. 9 Eq. 56

§ 3. **Specific appropriation.**—When money or goods are appropriated (*i. e.* set apart) for the purpose of securing the payment of a specific debt or class of debts, they are said to be specifically appropriated for that purpose. Thus, where A. draws a bill of exchange on B. and remits to B. a bill of lading, draft, or other document of title as security for the repayment of the bill, and B. accepts the bill on that footing, the bill of lading is specifically appropriated to the payment of the bill of exchange. The consequence of such a specific appropriation is that the goods represented by the bill of lading are applicable exclusively to the payment of the bill of exchange, in whosoever hands the latter may be, and that when the bill has been satisfied, the goods represented by the bill of lading (or what remains of them after payment of the bill) revert to A., the original owner. Hence, if B. becomes bankrupt before the goods are applied in payment of the bill, and a balance remains after payment of it, the balance belongs to A. L. R. 10 Ch. 639; L. R. 5 H. L. 157; L. R. 2 Eq. 84; 3 Ch. D. 477; 5 *Id.* 786.

§ 4. **Distribution.**—To appropriate also means to distribute. The property in goods of a deceased person is in the executor or administrator, and it is his duty to appropriate them, that is, to distribute them among the persons entitled (legatees or next of kin, &c.) according to their rights. See DISTRIBUTION.

§ 5. **Appropriation of payments.**—If A. borrows from B. a sum of \$50 on the first of January and another sum of \$50 on the first of July, and on the first of December pays him \$50, saying that it is in satisfaction of the debt incurred on the first of July, he is said to appropriate the payment to that debt. The question whether a payment is appropriated by the debtor is important in many ways;

thus, if A. owes B. two sums, one of which is barred by the statute of limitations, while the other is not, and A. makes a payment to B. without appropriating it (which is called a general payment), then B. may appropriate it to the statute-barred debt, although he could not recover it by action. The general rule is that the debtor may appropriate the payment at the time; that if he fails to do so the creditor may do so, and that if they both fail to do so the law will appropriate the payment to the earliest debt. (*See, generally, as to appropriation of payments, Chit. Cont. 684 et seq.; Leake Cont. 491; Snell Eq. 418.*) But the law will sometimes vary this rule in favor of a surety or guarantor, or even of the debtor himself.

§ 6. **By government.**—Appropriation of supplies is the mode by which the legislative branch of the government regulates the manner in which the public money voted at each session is to be applied to the various objects of expenditure (*e. g.* the army, navy, civil service, &c.), and the appropriation bills are annual statutes passed for the purpose. 1 Bl. Com. 335, *n.*; 2 Steph. Com. 579, *n.*; U. S. Const. Art. I. § 9.

§ 7. **Of benefice.**—In ecclesiastical law appropriation is where a benefice is perpetually annexed to a spiritual corporation, either aggregate or sole, as the patron of the living. In such a case the cure of souls is generally given to a clerk who, from being in effect the deputy of the appropriator or patron, is called the vicar (*vicarius*); he is instituted and inducted in much the same way as a rector, but he has only a portion of the emoluments of the living—generally a part of the glebe and a particular share of the tithes. (1 Bl. Com. 304; Phillim. Ecc. L. 268, where the history of appropriations will be found.) In some appropriated churches the officiating minister is a perpetual curate. Phillim. Ecc. L. 276.

APPROPRIATE, (in a railroad charter). 2 Gray (Mass.) 35.

—— (in a will). 12 Cush. (Mass.) 568.

—— (in constitutional provision). 2 Gray (Mass.) 1, 35.

APPROPRIATE, APPLY, DISPOSE, (in a will). 5 Rawle (Pa.) 115.

APPROPRIATED, (defined). 23 Mich. 277.

APPROPRIATED LANDS, (in canal acts). 7 Johns. (N. Y.) Ch. 343.

APPROPRIATED OR USED, (in fire policy). 34 Md. 227.

APPROPRIATION, (by army or navy). 9 Wall. (U. S.) 45; 12 *Id.* 623; 4 Ct. of Cl. 389.

—— (in a statute). 9 Wall. (U. S.) 45.

—— (in act of congress concerning public lands). 1 Scam. (Ill.) 344.

—— (of land). 1 Cranch (U. S.) 97.

APPROPRIATION, (of payments). 9 Wheat. (U. S.) 737.

— (of public moneys). 45 Cal. 149; 6 La. Ann. 68.

— (specific, what is). 45 Cal. 149.

— (under act of congress). 4 Ct. of Cl. 390.

— (when amounts to an equitable assignment). 3 Barb. (N. Y.) 262.

APPROPRIATION BILL, (not a revenue bill). 25 Minn. 1.

APPROPRIATIONS, (in a will). 2 Stockt. (N. J.) 230.

APPROVAL.—**LATIN**: *approbare*, to esteem good.

The assent to, or sanction by a magistrate or other judicial officer, of a bond or other instrument required by law to be submitted to him for his approval before taking effect. *See* ALLOW.

APPROVAL, (by bank). 12 Wheat. (U. S.) 64.

APPROVE.—

§ 1. **Commons**.—By the statute of Merton (20 Hen. III. c. 4), the lord of a manor may enclose portions of the waste lands, if they are subject only to a right of common of pasture, and provided he leaves sufficient common for those entitled thereto. This is called "approving," from *appropriare*, to appropriate. (Bracton 228 a; Wms. Comm. 103; Stat. West II.; 13 Edw. I. c. 116), not from "an antient expression signifying the same as improving," as stated by Blackstone, vol. 2, p. 34. *See* COMMON; INCLOSURE.

§ 2. **In criminal law**, to approve was a species of confession, by which a person indicted of a capital crime, confessed it before plea pleaded, and accused others, his accomplices, of the same crime, in order to obtain his pardon. The approvement was equivalent to an indictment. It has long been obsolete. 4 Steph. Com. 394.

APPROVE, OF WHICH I, (in a will). 9 Ves. 374.

APPROVE THEREOF, IF THEY, (power given to freeholders). 5 Binn. (Pa.) 536.

APPROVED, (accounts of trustee). 104 Mass. 265, 272.

— (by a court or judge). 14 Mass. 167; 1 Pa. 467.

— (in a statute). 15 East 135.

APPROVER.—In old English law, (1) a bailiff, or sheriff; (2) one who confessed his crime and at the same time accused others to save himself. *See* APPROVE, § 2.

APPROVER, (defined). 26 Ill. 173.

APPURTENANCE.—**FRENCH**: *apurtenance*.

That which belongs to something else; an adjunct; an appendage; something annexed to another thing more worthy as principal, and which passes as incident to

it, as a right of way or other easement to land; an out-house, barn, garden, or orchard, to a house or messuage.—*Webster*.

APPURTENANCE, (in admiralty rules of U. S. Supreme Court). 3 Sawy. (U. S.) 201.

— (in a conveyance). 2 Barn. & C. 76.

— (in agreement for sale of a bridge). 15 Cal. 186.

— (in contract to sell). 11 Ch. D. 968.

— (in return of levy by sheriff). 5 Cal. 470.

— (one railroad not, to another). 58 Pa. St. 253.

APPURTENANCES, (defined). 10 Pet. (U. S.) 25; 5 Day (Conn.) 467; 1 Chit. Gen. Pr. 153; 3 Salk. 40.

— (flats and shore). 6 Mass. 435.

— (flats and wharf). 6 Mass. 332.

— (devise of mill with). 3 Mas. (U. S.) 280.

— (in a declaration). 1 Cro. 186; 15 East 114; Yelv. 159.

— (in a deed). 54 Me. 276; 7 Mass. 5; 17 Id. 447; 9 Pick. (Mass.) 293; 8 Allen (Mass.) 291, 294; 1 Zab. (N. J.) 134; 1 Ashm. (Pa.) 417; 1 Pa. 410; 2 Nev. & M. 517; Burr. 623; 1 Cro. 113; 2 Id. 121; Hob. 171; 3 Salk. 40; 44 Iowa 57; 6 Neb. 1; 68 N. Y. 62; 6 Pick. (Mass.) 138; 3 Paige (N. Y.) 318; 2 Murph. (N. C.) 341; 49 Barb. (N. Y.) 501; 1 Sumn. (U. S.) 21, 38; 15 Johns. (N. Y.) 447; 10 Pet. (U. S.) 25; 4 Yeates (Pa.) 142; 1 R. I. 411; 2 Co. 31 a; 1 Plowd. 164; 5 Serg. & R. (Pa.) 109; 8 N. Y. 383, 387; 74 Pa. St. 25.

— (in a demise). 8 Barn. & C. 141; 2 Stark. 508; 4 Rawle (Pa.) 342.

— (in a devise). 1 Bos. & P. 53, 371; 1 Cro. 704; 1 P. Wms. 603; 4 Mass. 186, 196.

— (in a lease). 41 Md. 528; 49 Barb. (N. Y.) 501; 6 Bing. 150; Cro. Jac. 34; Plowd. 170.

— (in a mortgage). 1 Atk. 477, 553; 19 Kan. 408.

— (in a statute). 8 N. Y. 387.

— (in a will). 9 Pick. (Mass.) 293; 1 P. Wms. 600; 1 Serg. & R. (Pa.) 169; 4 Wheel. Am. C. L. 387; 1 Wash. (Va.) 61; 1 Barn. & C. 350; 1 Bing. 483; Cowp. 94, 363, 808; Cro. Car. 57, 129; 2 Dow. & Ry. 508; L. R. 1 Ex. 46; 1 My. & K. 571; Plowd. 210; 3 Wils. 141.

— (in mechanics' lien act). 19 Ill. 615.

— (in partition of estate). 74 Pa. St. 25.

— (of a mill stream). 3 Rawle (Pa.) 256.*

— (of riparian lot). 41 Md. 523.

— (of a vessel). 2 Root (Conn.) 71; 2 Chit. Gen. Pr. 86; 1 Man. & Ry. 392.

APPURTENANCES AND PRIVILEGES, (in a will). 4 Com. Dig. 155, n. (g).

APPURTENANT.—A right annexed to land is appurtenant where the connection has arisen either by grant or by prescription from long adverse enjoyment. In such a case the appurtenant thing passes with the thing to which it is annexed whenever a conveyance or transmission

or the latter takes place. The principal instances of appurtenant rights occur in the case of commons and rights of way, which may be annexed to lands or houses, and franchises, which may be annexed to manors. Wms. Real Prop. 328. See those titles; also APPENDANT; EASEMENT; IN GROSS; REGARDANT.

APPURTENANT, (defined). Co. Litt. 121 b.
 — (in a deed). 4 Watts (Pa.) 109, 223;
 4 Ad. & E. 749; Cro. Car. 432; Dyer 30 b.
 — (in a lease). Cro. Jac. 519.
 — (in a statute). 101 Mass. 24.
 — (in a will). 5 Paige (N. Y.) 522; 2 T. R. 498.
 — (in policy of insurance). 16 B. Mon. (Ky.) 242; 5 Gray (Mass.) 504; 12 Id. 545; 17 N. Y. 200; 21 Barb. (N. Y.) 154; 36 N. Y. 648; 20 Barb. (N. Y.) 635.
 — (right of way). 4 Wheel. Am. C. L. 285.
 — (ways). 10 Pet. (U. S.) 54; 15 Johns. (N. Y.) 454; 2 Barn. & C. 100; 1 Car. & M. 439; 1 Chit. Gen. Pr. 475; 3 Dowl. & Ry. 287; 3 Taunt. 24; 3 Tyrw. 280.
 — (to a wharf). 6 Mass 332.
 APT TIME, (as referring to the order of proceeding). 74 N. C. 383.

APUD ACTA.—Among the recorded acts or proceedings. In the civil law, a party might appeal from the sentence imposed upon him, *apud acta*, i. e. in the presence of the judge, by simply saying *appello* (I appeal).

AQUA.—Water; sometimes a stream or watercourse. Used in such Latin phrases as—

Aqua cedit solo: Water follows the land. A sale of land will pass the water which covers it. 2 Bl. Com. 18; Co. Litt. 4.

Aqua currit et currere debet ut currere solebat: Water flows and ought to flow as it has been accustomed to flow. (2 Kent Com. 439.) Each riparian owner has a right in the natural flow of the stream, and ordinarily, an obstruction diminishing the flow, or a diversion of the stream from its natural channel, is actionable.

AQUA QUOTIDIANA.—Daily water; that which it was lawful to draw at any time of the year.—*Burrill*.

AQUÆ DUCTUS.—A civil law easement or servitude, consisting in the right to carry water over or through the land of another by means of pipes or conduits (aqueducts).

AQUÆ HAUSTUS.—A civil law easement or servitude, consisting in the right to draw water from another's fountain, spring or well.

AQUÆ IMMITTENDÆ.—A civil law easement or servitude, consisting in the right of one whose house is surrounded with other buildings, to cast waste water upon the adjacent roofs or yards. Similar to the common law easement of drip. 15 Barb. (N. Y.) 96.—*Bouvier*.

AQUAGIUM.—A canal, ditch or watercourse running through marshy grounds. A mark or gauge placed in, or on the banks of a running stream, to indicate the height of the water was called *aquagangium*.—*Spel. Gloss*.

AQUATIC RIGHTS.—Individual rights in water; rights of fishery and navigation in the sea and rivers. See NAVIGATION; RIPARIAN RIGHTS; WATERCOURSES.

ARABLE, (land). 1 Str. 71.
 — (in a lease). 8 Mod. 311.

ARALIA.—LATIN: *arare*, to plow.
 Lands fit for tillage, or which were used for agricultural purposes.

ARATOR.—A plowman; a farmer of arable land.

ARATRUM TERRÆ.—As much land as a single plow would suffice to till, or one *arator* could cultivate.

ARATURA TERRÆ.—The plowing of land by the tenant, or vassal, in the service of his lord.—*Whishaw*.

ARATURIA.—Land suitable for the plow; arable land.—*Spel. Gloss*.

ARBITER.—A Roman law term signifying a person clothed with discretionary power of a judicial character. (1) A person appointed by the *prætor* to decide controversies according to the rules of natural justice and equity, and thus distinguishable from the *judez* who was bound to follow the strict rules of law. (2) An arbitrator (*q. v.*) But the old writers make this distinction: they say the "arbiter" must decide the controversy submitted to him according to the rules of law and equity, while the "arbitrator" is unshackled by such rules and may decide as he pleases so that it be according to the judgment of a sound man.—*Cowell*. This distinction is not observed in modern law (Russ. Arb. 112) nor by the Scotch law.—*Bell*. A recent writer thinks the true distinction to be that "arbitrator" means one chosen to decide a question which may properly be the foundation of an action or suit, and whose decision thereon is reviewable in the courts of justice, while "arbiter" is the proper designation of a referee chosen to decide matters irrespective of any law governing his decision, or matters "outside of or above municipal law" such as questions of honor or courtesy, or wagers.—*Abbott*.

ARBITRAMENT AND AWARD.—

The technical name for the plea used in a common law action for damages where the parties had submitted the question to an arbitrator, and he made his award, for this was a good defence to the action. (Chit. Cont. 725.) Arbitrament (Norman-French, *arbitrement*) is the old word for arbitration (*q. v.*)—*Termes de la Ley*, (*s. v.*)

ARBITRATE A CAUSE, (agreement to). 3 Day (Conn.) 118.

ARBITRATION.—**LATIN:** *arbitratio, arbitratu*.

The settlement of a question (usually one of fact) by the decision of one or more persons, called arbitrators, to whom the dispute is referred. As a general rule, any question which might be determined by a civil action may be referred to arbitration. Arbitration is either by consent or compulsory.

§ 1. **By consent.**—Arbitration by consent is effected by a submission to arbitration; if no action has been commenced concerning the matter in dispute, the submission takes the form of an agreement, called an agreement of submission; if an action has been commenced, and the parties are willing to have the question decided by arbitration, an order of reference is made by a judge or the court, and in that case the order forms the submission. Generally the question is referred to two arbitrators, with power, in the event of their disagreeing, to select an umpire (*q. v.*)

§ 2. **Compulsory arbitration** is (1) where the question is required to be submitted by statute (*see* § 4 *infra*), or (2) where an action has been brought and the court or judge, being of opinion that the matter in dispute can be more conveniently decided by an arbitrator than by a jury (as where it consists of questions of account), orders it to be so determined. In most of the States this is called a reference (*q. v.*), but in Pennsylvania there is a distinct practice of compulsory arbitration. Act of June 16th, 1836, pamph. p. 715.

§ 3. **Award.**—The decision of the arbitrator (if he is a private person) is termed his award; it is signed by the arbitrator, who gives notice to the parties that it is ready, and the award is then considered as published. (Sm. Ac. 444 *et seq.*) As to the effect of the award, see that title. *See* **INQUIRY; REFERENCE; UMPIRE.**

§ 4. **Statutory.**—In England, provision is also made by various acts of parliament for the determination of certain questions by arbitration: *c. g.* the assessment of compensation under the lands clauses act; disputes between railway companies under Stat. 22 and 23 Vict. c. 59; disputes between masters and workmen with reference to their employment and service, &c. 5 Geo. IV. c. 96; 35 and 36 Vict. c. 46.

ARBITRATION, (defined). 36 Ohio St. 283.

— (submission to). 9 Wend. (N. Y.) 649, 661.

— (what reference is). 13 Wend. (N. Y.) 293.

ARBITRATOR.—A disinterested, unofficial judge, to whose judgment or decision questions in controversy (generally questions of fact) are submitted by consent of the parties, or, in some cases, compulsorily, by order of a court.

ARBITRATORS, (suits to be left to, in a deed). 8 T. R. 139.

ARBITRIUM.—The decision of an arbiter, or arbitrator; an award; a judgment.

Arbitrium est judicium: An award is a judgment.

ARBOR.—A growing tree, plant, or vine; the mast of a ship. *Arbor civilis*, or *arbor consanguinitatis*, a genealogical tree, or picture in the shape of a tree showing the course of descent, the different "branches," and the relationship between persons of the same family. (1 Co. Inst.; Hale C. L.) *Arbor finalis*, a boundary tree. Bract. 207 b.

Arbor dum crescit, lignum dum crescere nescit: A tree while it grows, wood when it cannot grow.

ARCANA IMPERII.—State secrets. 1 Bl. Com. 337.

ARCARIUS.—A treasurer; a custodian of public money.—*Spel. Gloss.*

ARCH, (in highway act). 2 Keyes (N. Y.) 327.

ARCHAIONOMIA.—The name of a collection of Saxon laws compiled in Latin by one Lambard, in the time of Queen Elizabeth, and afterwards included by Dr. Wilkins in his *Leges Anglo-Saxonice*.

ARCHBISHOP.—The chief of all the clergy within his province. He has two concurrent jurisdictions, one as ordinary or bishop within his own diocese, the other as superintendent throughout the whole province, by virtue of which he has the inspection of the bishops of that province as well as of the inferior clergy, or, as the law expresses it, the power to visit them. He confirms the election of the bishops, and afterwards consecrates them; and, when so di-

rected by the queen's writ, he calls the bishops and clergy of his province to meet him in convocation. He is also superior ecclesiastical judge within his province (*see* ECCLESIASTICAL COURTS), and a spiritual lord of parliament. (*See* PARLIAMENT; ESTATE.) There are two archbishops, namely, of Canterbury and York, of whom the former is the superior, being called the primate of all England. Phillim. Ecc. L. 82; 2 Steph. Com. 664. *See* PRIMATE.

ARCHDEACON.—A dignitary of the Church of England, having an ecclesiastical jurisdiction, immediately subordinate to, but independent of, the bishop. A diocese is frequently divided into several archdeaconries. The archdeacon visits the clergy, and has a court for hearing ecclesiastical causes. 1 Bl. Com. 383; Phillim. Ecc. L. 236 *et seq.* *See* DIOCESAN COURTS.

ARCHES.—*See* COURT OF ARCHES.

ARCHIVES.—(1) The place where public documents, state papers, records, charters, &c., are kept; a private depositary in a library.—*Cowell; Spel. Gloss.* (2) The writings, of whatever description, so deposited. The second is the more common meaning, *e. g.* by the phrase "archives of government," or of "a college" or "monastery;" the state papers of the government, or the records or charters of the college or monastery, are more frequently intended than is the place of their deposit.

ARCHIVIST.—The custodian of archives.

ARCTA ET SALVA CUSTODIA.—Close and safe custody. A direction to an officer who has arrested a man on a *ca. sa.* requiring him to keep him in close custody.

ARDENT SPIRITS, (defined). 3 Harr. (N. J.) 311, 321.

ARDOUR.—In old English law, an incendiary; a house burner.

ARE.—A surface measure in the French law, in the form of a square, equal to 1076.441 square feet.—*Bouvier.*

AREA.—(1) Anciently, a vacant space, or place not built upon in a city; the ground upon which a house formerly stood.—*Calv. Lex.* (2) In modern law, an enclosed yard within, and surrounded by, a building; an open space adjoining a house.

AREA, (person found in, for unlawful purposes). 1 Chit. Gen. Pr. 176.

AREA-GATE, (in an indictment for burglary). Russ. & B. C. C. 322.

ARENALES.—A Spanish law term, signifying sandy beaches, or low lands, on the banks of a river.

ARENTATIO.—In old English law, a renting or rent; from *arentare*, to rent, or let out at a certain rent.

ARETRO.—In arrear; behind. Also written *a retro*.

ARGENTARIUS.—In the Roman law, a money lender or broker; a dealer in money; a banker. *Argentarium*, the instrument of the loan, similar to the modern word "bond" or "note."

ARGENTARIUS MILES.—A money porter in the English Exchequer, who carries the money from the lower to the upper Exchequer to be examined and tested.—*Spel. Gloss.*

ARGENTUM ALBUM.—Bullion; uncoined silver; common silver coin; silver coin worn smooth.—*Cowell; Spel. Gloss.*

ARGENTUM DEI.—God's money; money given by way of earnest in making a bargain.—*Cowell.*

ARGUENDO.—In the course of argument. A word frequently found (often abbreviated, thus, *arg.*) in the books, and denoting that what immediately follows (or precedes it) is merely an expression of opinion by the court or counsel, and not a decision entitled to weight as an authority or precedent.

ARGUMENT.—*FRENCH: argument.*

The argument of a demurrer, special case, appeal or other proceeding involving a question of law, consists of the speeches of the opposed counsel; namely, the "opening" of the counsel having the right to begin (*q. v.*) the speech of his opponent, and the "reply" of the first counsel. It answers to the trial of a question of fact. *See* TRIAL.

ARGUMENTATIVE is used in two senses—

§ 1. In the old common law pleading, a plea was said to be argumentative if a material fact was stated, not directly, but by inference only. "Thus, to allege that E. B. was seised for life, would be to deny by implication, but by implication only, that the reversion belonged to him in fee; and, therefore, to avoid argumentativeness, a direct denial that the reversion belonged to him is added." (Steph. Pl. (5) 208, 422.) This sense is obsolete.

§ 2. In the more modern sense, an affidavit is said to be argumentative if it con-

ains, not merely allegations of fact, but arguments as to the bearing of those facts on the matter in dispute such as should be left to be advanced when the matter comes before the tribunal.

ARGUMENTUM.—An argument (*q. v.*) Used in some Latin phrases, such as—

Argumentum a communiter accidentibus in jure frequens est: An argument based on common occurrences is frequent in law.

Argumentum a divisione est fortissimum in jure: An argument from division is most forcible in law. To show that a thing is not what it is asserted to be, it is enough to prove that it does not contain any of the parts or divisions into which such other thing is divisible.

Argumentum a majori ad minus negative non valet; valet e converso: An argument from the greater to the less is not forcible negatively; conversely, it is forcible.

Argumentum a similis valet in lege: An argument from analogy is strong in law.

Argumentum ab auctoritate est fortissimum in lege: An argument from authority is strongest in law.

Argumentum ab impossibili valet in lege: An argument deduced from an impossibility is forcible in law.

Argumentum ab inconvenienti plurimum valet in lege: An argument deduced from inconvenience (or hardship) is of the greatest weight in law. A construction of a writing which will plainly work great inconvenience will not be made, but another construction will be adopted, the first one not being considered within the intention of the writer. So where a law is uncertain, that construction will be adopted which is attended with the least inconvenience.

ARIBANNUM.—A fine formerly imposed upon one who failed to set out to join the army after notice from the king so to do.

ARIMANNI.—A mediæval term for a class of agricultural owners of small allodial farms, which they cultivated in connection with larger farms belonging to their lords, paying rent and service for the latter, and being under the protection of their superiors. Military tenants holding lands from the emperor.—*Spel. Gloss.*

ARISE, (in procedure act). 70 N. C. 139.

ARISING, (in a statute). 3 Cranch (U. S.) 409.

ARISING UNDER A LAW, (a case). 2 Dall. 390.

ARISTOCRACY.—(1) A privileged class of the people; nobles and dignitaries; people of wealth and station. (2) A form of government in which the supreme power is lodged in a council of nobles, or particular class of men, without account-

ability to any superior, or to the people. See **ABSOLUTISM**; **GOVERNMENT**; **MONARCHY**.

ARISTODEMOCRACY.—A form of government in which the supreme power is shared by the aristocracy (*q. v.*) and the people.

ARLES.—Earnest money paid in Yorkshire (*arles-penny*) and Scotland on the making of a bargain, as a symbol thereof.

ARM OF THE SEA.—A portion of the sea (more or less land-locked) where the tide flows and re-flows. Sounds, bays, creeks and coves are arms of the sea. An arm of the sea is deemed to extend as far into the interior of a country as the water of fresh rivers is propelled backwards by the ingress and pressure of the tide. Ang. T. W. 73.

ARM OF THE SEA, (defined). Olc. (U. S.) 18; 2 Stockt. (N. J.) 211.

— (distinguished from river not navigable). 2 Conn. 484; 5 Wheel. Am. C. L. 417.

ARMA.—(1) Arms; weapons, offensive and defensive. (See **ARMS**.) (2) Armor; arms or cognizances of families.

Arma in armatos sumere jura sunt: To take arms against the armed is permissible in law. This maxim lies at the root of the doctrine of self-defence.

ARMA MOLUTA.—Keen-edged weapons which inflict cuts, as distinguished from blunt ones which cause contusions and bruises.—*Bract.* 144 b; *Cowell*.

ARMED VESSEL, (in a statute). 1 Ct. of Cl. 174; 2 Cranch (U. S.) 64, 84.

ARMIGER.—An armor-bearer, or esquire, who attended a knight, bearing his armor or shield; a tenant by scutage (*per servitium scuti*; by the service of the shield).—*Spel. Gloss.*

ARMISTICE.—A temporary cessation of hostilities between belligerents; a kind of truce (*q. v.*)

ARMS.—(1) Weapons; implements of attack. "Arms in the common law signifieth anything that a man striketh or hurteth withal," including therefore sticks, stones and fists (Co. Litt. 161 b, 162 a), as in the expression *vi et armis* (*q. v.*) (2) Coats-of-arms; escutcheons; crests; cognizances of families. (3) As to what weapons are deemed "arms" within the provision of the United States constitution guaranteeing to the people the right to bear arms (Amendment, Art. II.), see the cases referred to below:

ARMS, (of a State). 7 Port. (Ala.) 529.
 ——— (right to bear, in constitution). 1 Ala. 612; 31 Ark. 455; 3 Ired. (N. C.) L. 418; 3 Heisk. (Tenn.) 165; 24 Tex. 394; 35 *Id.* 493.

ARMY.—The armed forces of a nation intended for service on land. This word, as used in the acts of congress, does not include the naval forces or the marine corps. 2 Sawy. (U. S.) 200.

ARPEN—ARPENNUS—ARPENT.—A land measure, varying in different localities. It comes from the French law, and has been adopted in Louisiana, (6 Pet. (U. S.) 763); a French term, signifying an acre. (4 Hall L. J. 518.) See Domesday Book for a frequent occurrence of the word.

ARPENTATOR.—A measurer or surveyor of land.—*Cowell; Spl. Gloss.*

ARRA—ARRÆ, or ARRHA.—Earnest; something given as evidence of a completed bargain. Bract. 61 b.

ARRAIGN—ARRAIGNMENT.—OLD FRENCH: *aragnier, areismier*; LATIN: *ad rationem ponere*; to call to account. (Skeat's Etym. Dict. s. v. See DERAIGN.) To "arraigne an assize" was to bring an action. Litt. §§ 366, 442; Co. Litt. 262 b.

The arraignment of a prisoner, against whom a true bill for an indictable offence has been found by the grand jury, consists of three parts: first, calling the prisoner to the bar by name; secondly, reading the indictment to him; and thirdly, asking him whether he be guilty or not of the offence charged. On this he pleads guilty, not guilty, or stands mute. (Arch. Cr. Pl. 146; 4 Steph. Com. 389.) In modern practice, if the prisoner stands mute (refuses to plead) a plea of not guilty is generally entered by order of the court. See MUTE; PLEA; TRIAL.

ARRAIGNMENT, (defined). 16 Ohio St. 344.
 ——— (distinguished from "plea"). 19 Gratt. (Va.) 640, 656.

* In England the principle of administering the estate of an insolvent by private arrangement with his creditors, whether under the supervision of the court of bankruptcy or not, but without the debtor actually being made bankrupt, was introduced by the act 6 Geo. IV. c. 16, and developed by the act of 1849 and subsequent acts. (Robs. Bankr. 4, 7, 9, 627.) The arrangement was effected either by means of a deed assigning all the debtor's property to trustees for the benefit of his creditors, or by a resolution passed by the creditors, and the assent of a certain majority of the creditors to a composition offered by the debtor was binding on the minority. These acts have been repealed, and under

ARRAMEUR.—In old French law, an officer employed to superintend the loading of vessels, and the safe stowage of the cargo. 1 Pet. (U. S.) Adm. Append. XXV.

ARRANGE ITS AFFAIRS, (in charter of corporation). 6 Pick. (Mass.) 43.

ARRANGEMENT SATISFACTORY, (promise to make). 6 Wend. (N. Y.) 658.

ARRANGEMENT WITH CREDITORS.—See BANKRUPTCY; COMPOSITION; LIQUIDATION.

ARRAS.—In Spanish law, a voluntary donation made by the husband to the wife by reason of the marriage and as an offset to the *dote* or portion received by him from her.

ARRAY.—See CHALLENGE.

ARREARAGES—ARREARS.—Money due and unpaid; a balance still due after part payment—applied most commonly to a balance due for rent, interest or taxes.

ARREARAGES OF RENT, (in statute of limitations). 7 Johns. (N. Y.) Ch. 90; 14 Johns. (N. Y.) 479; 2 Saund. 64; 2 Vern. 235; 10 Ves. 453.

ARREARS OF A MORTGAGE, (in a will). 2 Ves. 416, 417.

ARRECT.—To accuse or charge with an offence. *Arrectati*, accused or suspected persons.—*Bowyer*.

ARREST.—OLD ENGLISH: *aresten*; OLD FRENCH: *arester*, from Latin, *ad* and *restare* (*re*, back, and *stare*, to remain). Skeat. Etym. Dict.

To arrest is to stop. The term is applied to persons, to things, and to judgments.

§ 1. **Person**.—To arrest a person is to restrain him of his liberty by some lawful authority. Arrest is usually made by actual seizure of the defendant's person, but any touching, however slight, of the person is sufficient for this purpose. And arrest is not confined to corporal seizure: where the officer entered the room in which the defendant was, and locked the door, tell-

the existing bankruptcy law arrangements consist either of a liquidation, where the debtor's property is administered in much the same manner as in bankruptcy; or a composition, when the debtor pays his creditors a fixed proportion of their debts. An office is attached to the London Bankruptcy Court called the "Office for Registration of Arrangement Proceedings," and presided over by registrars appointed by the chief judge; all petitions and proceedings in liquidations and compositions are registered there. (*Id.* 648.) As to arrangements between joint stock companies and their creditors, see 33 and 34 Vict. c. 104

ing him at the same time that he arrested him, the court held it to be a good arrest. And if the officer say, "I arrest you," and the party acquiesce, or afterwards go with him, this is a good arrest. It seems that in order to constitute a valid arrest, the warrant should be produced, or the party arrested made aware of it. Arch. Pr. 606; 1 Ex. D. 352.

§ 2. **Civil proceedings.**—Arrest in civil proceedings is now more rare than formerly; the principal instances are: where a person is attached for contempt of court; where the defendant is suspected of intending to leave the country before final judgment; certain cases where a person has made default in the payment of a sum of money recovered or ordered to be paid by a court or judge; in penal actions or actions sounding in tort; in summary proceedings before justices of the peace; where the debtor has been guilty of fraud in contracting the debt sued for, or is a non-resident, or conceals himself to avoid process, and where he has means to pay but refuses to do so. For some other grounds of arrest in civil actions, see the statutes of the several States.

§ 3. **On mesne process.**—Formerly in England, arrest in civil proceedings was of two kinds—on mesne and on final process. At common law the object of arrest on mesne process was originally to compel a person to appear in an action, but this was afterwards altered so as to make it a means of compelling him to give special bail. (3 Bl. Com. 282 *et seq.* See BAIL.) Arrest on mesne process was abolished by Stat. 1 and 2 Vict. c. 110, in all cases except that of a defendant suspected of intending to abscond, and was abolished in that case also by the debtors' act, 1869 (*q. v.*), another mode of arriving at the same result being substituted. Arrest on mesne process in chancery was to compel a defendant to put in an appearance or answer to a bill of complaint (Dan. Ch. Pr. index, title *Attachment*), and no longer exists, bills of complaint having been abolished.

Arrest on mesne process is retained in America, subject to many restrictions, as to which see the statutes and codes of the various States.

§ 4. **On final process.**—Arrest on final process is a mode of execution, that is, of enforcing a judgment. The writ is called a *capias ad satisfaciendum* (*q. v.*) It is generally allowed in actions sounding in tort, where the defendant was liable to arrest (or was actually arrested) before judgment.

§ 5. **Criminal proceedings.**—In criminal procedure, arrest is generally made under a writ of *capias*, or *venire facias*, or a warrant (*q. v.*) Arrest without warrant is only allowed in certain cases, as where a person is either seen committing an offence or is apparently about to commit some offence. 4 Steph. Com. 348.

§ 6. **Admiralty practice.**—In admiralty actions a ship or cargo is arrested when the marshal has served the writ in an action *in rem*. Wms. & B. Adm. 193. See ACTION; BAIL; RELEASE.

ARREST, (defined). Baldw. (U. S.) 234, 239; 21 Ala. 240; 20 Ga. 369; 2 Blackf. (Ind.) 294; 8 Dana (Ky.) 190; 1 Metc. (Mass.) 502; 2 N. H. 318; 8 Johns. (N. Y.) 379; 1 Wend. (N. Y.) 210; 13 Ired. (N. C.) L. 448; Harp. (S. C.) 453; 19 Am. Dec. 480, 485, *n.*; 1 Ry. & M. 26.

—— (authority to, how exercised). Cowp. 65.
—— (of foreign minister). Baldw. (U. S.) 234.

—— (suit against sheriff for not arresting). 10 Wend. (N. Y.) 367.

ARREST OF JUDGMENT.—

§ 1. **On a criminal prosecution**, when there is some objection on the face of the record (*e. g.* a material misstatement or uncertainty in the indictment not aided, that is, not corrected, by the verdict), the defendant may at any time between conviction and sentence move the court in arrest of judgment, and if the objection is well founded, judgment of acquittal is given, which, however, is no bar to a fresh indictment. Arch. Cr. Pl. 177.

§ 2. **Under the common law practice**, where a defendant might have taken, but did not take, some objection of substance to the plaintiff's pleading, by demurring to it, and a verdict is found for the plaintiff, the defendant may then take the objection by moving in arrest of judgment, and if the objection is well founded, judgment will not be entered for the plaintiff. (Sm. Ac. (11th ed.) 183; 3 Steph. Com. 562.) This practice is now obsolete in England, and probably in most if not all of the States of the Union.

ARRESTANDIS BONIS NE DIS-SIPENTUR.—An old English writ to recover back cattle or goods taken in an action, and in danger of being wasted or destroyed.—*Bouvier*.

ARRESTATIO.—In old English law, an arrest (*q. v.*)

ARRESTEE.—In Scotch law, he in whose possession the movables of another, or a debt due another, are arrested by the process called "*arrestment*" (*q. v.*)

ARRESTER.—He who sued out, or in whose behalf a process of arrestment was sued out.

ARRESTMENT.—In Scotch law, (1) the arrest of one charged with crime and his detention until trial or bail given; (2) a process for the securing a debtor's moveables in the hands of another person, debtor to the principal debtor. It is similar to the American attachment, garnishment, or trustee process. *See* those titles.

ARRET.—A judgment, sentence or decree of a court having power to impose or make it. This word is used in Canada and Louisiana where the French law prevails.

ARRETTED.—Charged with crime before a judge; arraigned.

ARRHA, or ARRHÆ.—Same as **ARRA** (*q. v.*)

ARRIAGE AND CARRIAGE.—Indefinite services formerly required of tenants in the English and Scotch law. Abolished by Stat. 20 Geo. II. c. 50, §§ 21, 22.—*Bell; Burrill.*

ARRIER BAN.—A repeated summons or proclamation calling the feudal tenants to join their lord.—*Spel. Gloss.*

ARRIERE FIEF, or FEE.—An inferior fief or fee granted by a vassal of the king, out of the fief held by him of the king.

ARRIERE VASSAL.—A vassal of a vassal; the holder of an arriere fief (*q. v.*)

ARRIVE.—**LATIN:** *ad*, to, and *ripa*, the shore, or bank of a river.

To reach, or come to a particular place of destination by travelling towards it. Brock. (U. S.) 411.

ARRIVAL, (in a statute). 9 How. (U. S.) 372.
—— (in acts of congress concerning revenue and navigation). 2 Sumn. (U. S.) 419, 423; 5 Pet. (U. S.) 102; 9 How. (U. S.) 372, 378; 5 Mas. (U. S.) 445, 447; 6 Op. Att.-Gen. 163; 9 *Id.* 256.

—— (in an instrument of bottomry). 3 Barn. & Ad. 50. *See* **NON-ARRIVAL**.

—— (in limits of the United States). 9 Wheat. (U. S.) 362.

—— (of vessel). 1 Brock. (U. S.) 411.

—— (of vessel, distinguished from "entry"). 5 Mas. (U. S.) 120.

—— (of vessel, to terminate insurance policy). 1 Holmes (U. S.) 136.

—— (under coasting act). 5 Mas. (U. S.) 445.

ARRIVED, (in bill of lading). 10 Mass. 513.

—— (in marine insurance policy). 6 Mass. 313.

—— (vessel, when). 17 Mass. 188, 189.

ARROGATIO—ARROGATION.—The adoption of a person *sui juris*. Dig. 1, 7, 5; Inst. 1, 11, 1.

ARSAE ET PENSATÆ.—Burnt and weighed. A term anciently applied to money assayed by fire and then weighed to test its purity. (*See* **ARSURA**.) Before this test the money was called *argentum album* (*q. v.*)

ARSER IN LE MAIN, or ARSURE EN LE MAIN.—Burning in the hand. The punishment by burning or branding the left thumb of lay offenders who claimed and were allowed the benefit of clergy, so as to distinguish them in case they made a second claim of clergy. 5 Co. 51; 4 Bl. Com. 367.

ARSON.—**LATIN:** *ardere*, to burn.

Arson, at common law, is the act of unlawfully and maliciously burning the house of another man. (4 Steph. Com. 99; 2 Russ. Cr. 896; Steph. Cr. Dig. 298.) At the present day there is no distinction between arson and the crime of unlawfully and maliciously setting fire to a place of worship, a building used in farming, trade, or manufacture, a stack of hay, wood, &c., a ship, a mine of coal, or a public or quasi-public building. The punishment varies in the different jurisdictions, according to the degree of the crime; thus, in some States arson in the first degree is punishable capitally, in others not.

ARSON, (defined). 1 Park. (N. Y.) Cr. 560.
—— (in New York Crimes Act). 18 Johns. (N. Y.) 116; 15 Wend. (N. Y.) 160.

ARSURA.—In old English law, the testing of coin by heating it; also the loss in weight occasioned thereby.—*Spel. Gloss.*

ART AND PART.—In Scotch law, an accessory, aider or abetter in a criminal offence. One who either actually takes part in the crime, or who instigates, counsels or commands another to commit it.

ART, TRADE AND MYSTERY, (in indenture of apprenticeship). 15 East 168.

ARTICLE, (defined). 4 Daly (N. Y.) 195.
—— (in notice by carrier). 6 Blatchf. (U. S.) 64.

—— (in receipt of carrier). 54 N. Y. 496.

ARTICLED CLERK.—A pupil to a solicitor under articles of agreement containing mutual covenants, binding the solicitor to teach and the articulated clerk to learn the business of a solicitor. The English Stat. 6 and 7 Vict. c. 73, and various other acts, contain regulations limiting the number of articulated clerks serving the same solicitor at the same time to two, fixing the time which every articulated clerk must serve (three, four or five years, according to his education and preparation), and the number of examinations which he must pass before he can be admitted a solicitor, and regulating the manner in which articles of clerkship must be registered

and enrolled. If the service under the articles is interrupted or put an end to by agreement or by the death of the master, or other cause, fresh articles have to be entered into for the residue of the unexpired term of service. Archb. Pr. 29 *et seq.*; 3 Steph. Com. 214; Stat. 7 and 8 Vict. c. 86; 23 and 24 Vict. c. 127; 37 and 38 Vict. c. 68; 40 and 41 Vict. c. 25.

ARTICLES.—LATIN: *articulus*, a joint.

Clauses or divisions of a document, and hence "articles" sometimes means the document itself, *e. g.* articles of agreement, articles of partnership, &c. (*q. v.*)

§ 2. In criminal proceedings in the ecclesiastical courts, the first plea is called "articles," because it runs in the name of the judge, who *articles and objects* (Phillim. Ecc. L. 1254, 1290,) the facts charged against the defendant. Rog. Ecc. L. 717.

ARTICLES, (in tax act). 8 Blatchf. (U. S.) 254.

ARTICLES APPROBATORY.—That portion of the proceedings in the Scotch law, which corresponds to the answer to an English bill in chancery. The answer (*q. v.*)

ARTICLES IMPROBATORY.—In the Scotch law, a pleading corresponding to a bill in chancery to set aside a deed.

ARTICLES OF AGREEMENT.—

A memorandum in writing of the terms of an agreement; formerly a preliminary writing. Now, however, in the United States, the agreement itself is the more common meaning, also each distinct clause or engagement in it.

ARTICLES OF ASSOCIATION.—

Regulations for the management of a company or corporation. They are such as the subscribers to the memorandum of association deem expedient, provided they do not infringe the provisions of the act under which the company is incorporated. They generally contain regulations as to assessments, transfers of shares, general meetings, votes of members, powers of directors, &c. Thring. Comp. 134.

ARTICLES OF CONFEDERATION.—

The name of the instrument evidencing the compact made between the thirteen original States of the Union, before the adoption of the constitution. It was entered into March 1, 1781, and remained in force until the adoption of the constitution in March, 1789.

ARTICLES OF IMPEACHMENT.

—The formal written allegations of the grounds for the impeachment and removal of a public officer. They are prepared by the lower legislative house, *i. e.* the house of representatives, or the assembly (in England the house of commons) and presented to the upper house (senate or house of lords) for trial.

ARTICLES OF PARTNERSHIP.

—The formal agreement in writing between partners, by which the firm is formed; the firm name; the commencement, duration, and object of the partnership decided upon; the nature and management of the business; the time, mode, and respective amounts of capital to be severally paid in by the partners; their respective shares in the profits and losses; the settlement of the firm accounts, and the ultimate winding up of the partnership, are provided for and agreed upon; together with such other matters, such as specifications of the powers granted to the several partners; their respective duties; the settlement of disputes between them by arbitration, &c., &c., as the parties may decide to insert.

ARTICLES OF THE PEACE.—A complaint made or exhibited to a court by a person who makes oath that he is in fear of death or bodily harm from some one who has threatened or attempted to do him injury. The court may thereupon order the person complained of to find sureties for the peace, and, in default, may commit him to prison. 4 Bl. Com. 255. See BREACHES OF THE PEACE; JUSTICES OF THE PEACE.

ARTICLES OF RELIGION.—Commonly called the "Thirty-nine Articles." Those which were agreed upon by the archbishops, bishops, and the whole clergy in the Convocation of 1562. They must be subscribed by persons before being received into the ministry. Phillim. Ecc. L. 125; Stat. 13 Eliz. c. 12.

ARTICLES OF ROUP.—In the Scotch law, are the terms and conditions under which property is sold at auction.

ARTICLES OF SET.—An agreement for a lease, in the Scotch law.

ARTICLES OF SETTLEMENT, (how considered in equity). 2 Atk. 545.

ARTICLES, OTHER, (in a deed). 2 Watts (Pa.) 64.

ARTICLES OF UNION.—The agreement entered into A. D. 1707, between the par-

liaments of the two kingdoms for the union of England and Scotland. There were twenty-five articles in the agreement. 1 Bl. Com. 96.

ARTICLES OF WAR — ARTICLES OF THE NAVY.—Regulations made by the crown, or general government, for the preservation of discipline in the army and navy respectively. 2 Steph. Com. 589, 595; U. S. Rev. Stat. tit. XIV. ch. 5. See COURT MARTIAL.

ARTICULATE ADJUDICATION.—A Scotch law term descriptive of the form of the judgment to be entered in an action brought to recover several distinct debts or demands; each debt or claim being separately adjudicated upon and accumulated, in order that a mistake in calculating one of them may not affect the others.

ARTICULI MAGNÆ CARTÆ.—The preliminary articles, forty-nine in number, upon which the *Magna Carta* was founded.

ARTICULI SUPER CHARTAS.—The Stat. 28 Edw. I. st. 3, in confirmation and enlargement of *Magna Carta* and the *Charta de Foresta*.

ARTICULO MORTIS, (in criminal law). 4 Car. & P. 544.

ARTIFICIAL.—Created by art, or by law; existing only by force of or in contemplation of law. Thus, *artificial person*, a corporation or company to which the law has given a distinct individuality, as distinguished from a natural person who is such by nature; *artificial presumptions*, also called "legal presumptions," those which derive their force and effect from the law, rather than their natural tendency to produce belief. 3 Stark. Ev. 1235.

ARTS, (lost, under patent laws). 10 How. (U. S.) 477.

— (useful, include processes). 15 How. (U. S.) 252, 268.

ARURA.—An old English law term, signifying a day's work in plowing.

AS.—(1) A pound; a coin weighing a pound (twelve ounces). (2) The whole of a thing; a sum of money, estate or inheritance in its entirety.

AS A REMEMBRANCE, (in a will). L. R. 13 Eq. Cas. 131.

AS ADMINISTRATOR, (in an action). 6 Halst. (N. J.) 163.

— (A. contracting). 4 Conn. 495; 8 Id. 19, 192; 9 Wend. (N. Y.) 273.

— (covenant of warranty in a deed). 8 Mass. 162; 5 Wheel. Am. C. L. 337.

— (deed given). 5 Wheel. Am. C. L. 343; 6 Com. 258.

AS ADMINISTRATOR, (note given). 13 Wend. (N. Y.) 557.

AS AFORESAID, (in a will). 10 East 510; Spenc. (N. J.) 591.

AS AGENT, (descriptive of person in an action). 4 Yerg. (Tenn.) 29.

— (signing of deeds and contracts). 8 Pick. (Mass.) 56.

— (in a bill of exchange). 2 Str. 955; 5 Taunt. 749.

— (in a charter party). 6 Binn. (Pa.) 228.

— (in a contract). 11 Mass. 27, 54; 10 Wend. (N. Y.) 271; 17 Id. 40; 2 Wheel. Am. C. L. 199, 205; 4 Id. 27; 7 Id. 448.

— (in government contracts). 9 Mass. 272; 1 East 135, 579; 1 T. R. 172, 674.

— (in a promissory note). 1 Cow. (N. Y.) 513; 12 Mass. 244; 16 Id. 461.

— (in a release). 22 Wend. (N. Y.) 324.

AS AMPLE A MANNER AS A., (in a covenant). 9 Johns. (N. Y.) 107.

AS AND FOR, (in pleading). 3 Barn. & C. 541.

AS APPEARS BY THE ACCOUNT, (in affidavit to hold to bail). 1 Wils. 121.

AS APPEARS BY THE BILL, (in affidavit to hold to bail). 1 Wils. 279.

AS APPEARS BY THE MASTER'S ALLOCATUR, (in affidavit to hold to bail). 2 T. R. 55.

AS BEFORE, (in a will). Coot. Ch. Cas. 243.

AS EXECUTOR, (covenant by A.). 1 Gall. (U. S.) 37.

AS EXECUTORS ARE BOUND IN LAW TO DO, (in covenant of warranty). 2 Ohio, 345.

AS FAST AS THAT, (in a contract to deliver goods). 104 Mass. 350.

AS FOLLOWS, (equivalent to "in words and figures following"). 2 W. Bl. 787, 788.

— (in written instrument). 1 Chit. Cr. L. 233.

— (in an indictment). Doug. 193; 1 Leach C. C. 77, 145, 192; 2 W. Bl. 787.

— (in an indictment for libel). 11 Mod. 96, 97.

— (in a will). 2 Barn. & C. 520.

AS FOR, (in a devise). Penn. (N. J.) 601.

— (in a will). 12 Serg. & R. (Pa.) 54.

— (introductory, in a will). 2 Nott. & M. (S. C.) 333; 2 Binn. (Pa.) 13, 455; 3 Id. 494; 8 Serg. & R. (Pa.) 288; 14 Id. 90; 2 Yeates (Pa.) 382; 4 Id. 179; 1 Munf. (Va.) 537; 7 Bing. 664; Cro. Jac. 104, 145; 2 P. Wms. 198; 3 Wils. 143.

AS FOR ALL MY WORLDLY ESTATE OR WEALTH, (introductory words in a will). 1 Har. & M. (Md.) 452; 17 Johns. (N. Y.) 221; 2 Desaus. (S. C.) Ch. 32; 3 Id. 168; 1 Bos. & P. 562; 2 Id. 252; 4 Id. 335; 5 Id. 343; Cas. t. Talb. 157; Cowp. 299, 355, 661; Doug. 759; 5 East 87; 11 Id. 220; 5 T. R. 13; 6 Id. 610; 8 Id. 64, 497; 2 Tyrw. 719; Willes 138; 3 Wils. 414; 2 W. Bl. 889.

AS IF, (in statutes). 4 Bac. Works 195.

AS IF SHE HAD DIED UNMARRIED, (in a will). L. R. 3 Ch. App. 505.

AS IS ABOVE WRITTEN, (in a covenant). 9 Johns. (N. Y.) 107.

AS IT HAS BEEN IMPROVED BY TENANTS, (devise of estate). 2 Mass. 394.

AS LONG AS, (in grant of estate). 2 Bouv. Inst. 276.

AS NEAR AS THE RULES OF LAW AND EQUITY WILL PERMIT. (defined). L. R. 1 H. L. 279.

AS NEARLY AS THE SAME CAN BE CONVENIENTLY DONE, (in tax act). 9 Gray (Mass.) 39.

AS NOW IN THE OCCUPATION OF, (in a will). L. R. 1 Q. B. 156.

AS NOW LAID OUT, (right of way). 101 Mass. 163.

AS OF FEE, (in a deed). Co. Litt. 10, 17 b.

— (seized). 1 Chit. Gen. Pr. 246.

AS OF HIS OWN PROPER, (in pleading). Ld. Raym. 866.

AS OF JUNE, (in a coroner's inquisition). 3 Car. & P. 414.

AS OUR PROPORTION, (in a release). 9 Mass. 236.

AS SOON AS MAY BE, (in a statute). 116 Mass. 333.

AS SPEEDILY AS THE SAME CAN BE DONE, (in a statute). 15 Mass. 455.

AS SUPERINTENDENT, (in a contract). 9 Mass. 490.

AS THE LAW DIRECTS, (in a will). L. R. 20 Eq. Cas. 410.

AS THE LINE RUNS, (in a description of land in a devise). 7 Halst. (N. J.) 309, 314.

AS THIS DEPONENT BELIEVES, (in affidavit to hold to bail). 2 Mau. & Sel. 563.

AS TO, (in a will). L. R. 5 H. L. 254; 1 Dall. 226.

AS TO SUCH CONTRACT, (in a statute). 21 Minn. 108.

AS TREASURER, (in a contract). 8 Mass. 103; 5 Wend. (N. Y.) 572; 2 Wheel. Am. C. L. 327.

— (in a promissory note). 2 Me. (Greenl.) 305; 8 Allen (Mass.) 464.

AS TRUSTEE, (A., contracting). 2 Wheat. (U. S.) 45.

— (promissory note made by several). 4 Minn. 126.

AS UPON EXECUTION, (in a statute) 9 Ind. 394.

ASCENDANTS.—LATIN: *ascendere*, to climb up.

Persons with whom one is related in the ascending line; one's parents, grandparents, great-grandparents, &c. In default of descendants qualified to take, an estate goes to the ascendants.

ASCENDANTS, (in law of descents). 10 Mart. (La.) 482, 561.

ASCERTAIN, (vote, from returns). 111 Mass. 354.

ASCRIPTITIUS.—A Roman law term for a foreigner who had been registered and naturalized in the colony in which he resided. Cod. 11, 47.

ASPORTATION—ASPORTA-VIT.—LATIN: *ab*, from, and *portare*, to carry.

Asportation is the act of carrying away goods, especially when the act is wrongful, in which case it is either a civil injury (*trespass de bonis asportatis*; see **TRESPASS**), or a crime, namely, larceny (*q. v.*)

ASSART.—NORMAN-FRENCH: *assartir*: OLD FRENCH: *essarter*, to improve land by rooting up thickets; LOW LATIN: *exartare*, from *ex* and *garrire*, to hoe or weed. Britt. 184 b; Littré Dict. s. v. *Essarter*.

In the old forest laws this was the offence of plucking up the thickets or coverts of a forest by the roots so as to make them arable land and prevent them from becoming forest again. (Manw. For. 48 a.) The laws of the forest have long since fallen into disuse (1 Steph. Com. 668), and with them the punishment of assarting.

ASSASSINATION.—Murder committed for hire; secret murder; killing a man treacherously from a place of ambush, or by suddenly taking him at a disadvantage.

ASSATH, or ASSAITH.—An ancient custom in Wales, by which a person accused of crime could clear himself by the oaths of three hundred men. It was abolished by Stat. 1 Hen. V. c. 6.—Cowell; *Spel. Gloss.*

ASSAULT.—LATIN: *ad*, to, and *saltus*, leaping.

§ 1. **Generally.**—Strictly speaking, an assault is an unsuccessful attempt to do harm to the person of another, as by menacing with a stick a person who is within reach of it, although no blow be struck. (Underh. Torts 118.) If a blow is struck, the act is a battery (*q. v.*); but in legal proceedings for an alleged battery, in order that if the plaintiff or prosecutor failed to prove the battery, he might still prove the assault, the act complained of would be described as an assault and battery, and hence in popular language the term assault has come to be treated as synonymous with battery.

§ 2. **In private or civil law**, an assault is a tort (*q. v.*), giving rise to a right of action for damages. See **SON ASSAULT DEMESNE**.

§ 3. **In criminal law** an assault is—(1) an attempt unlawfully to apply any actual force, however small, to the person of another, directly or indirectly; (2) the act of using such a gesture towards another person as to give him reasonable grounds to believe that the person using the gesture meant to apply actual force to his person; (3) the act of depriving another of his liberty. The consent of the person assaulted does not make the assault lawful if obtained by fraud. An act which is reasonably necessary for the common intercourse of life is not an assault: as where persons in a crowd push against one another.

§ 4. Common and other assaults.—

A common assault is a misdemeanor punishable by various short terms of imprisonment. Assaults with intent to commit felony, indecent assaults, and other varieties of assault, are liable to special punishment.

§ 5. Aggravated assaults.—With certain exceptions, assaults are also punishable on summary conviction before justices of the peace; but aggravated assaults on women and children, and assaults with intent to kill, or do great bodily harm, are proper subjects of indictment.

ASSAULT, (defined). Baldw. (U. S.) 571; 2 Wash. (U. S.) 435; 43 Ala. 354; 1 Hill (N. Y.) 351; 1 Hill (S. C.) 46, 363; 1 West. L. J. 118; 2 Bl. Com. 120; 1 Chit. Gen. Pr. 37; 1 Hawk. P. C. ch. 22, § 1.

— (what constitutes). 1 Cranch (U. S.) C. C. 310; 3 *Id.* 435; 5 *Id.* 348; 1 Dall. 114; 4 Wash. (U. S.) 534; 18 Ala. 547; 33 *Id.* 413; 43 *Id.* 354; 19 Ark. 190; 27 Cal. 630; 10 Iowa 126; 19 *Id.* 517; 20 Kan. 643; 27 Mo. 255; 27 N. H. 223; Penn. (N. J.) 380; 1 Ired. (N. C.) L. 125; 3 *Id.* 186; 11 *Id.* 475; Phil. (N. C.) L. 108; 63 No. Car. 13, 15; 74 *Id.* 244; 1 Hill (S. C.) 46; 3 Strobh. (S. C.) L. 137; 1 Sneed (Tenn.) 606; 3 *Id.* 66; 2 Humph. (Tenn.) 457; 23 Tex. 574; 44 *Id.* 43; 15 Wis. 240; 8 Car. & P. 660; 4 Cox C. C. 220; 1 Den. C. C. 580; East P. C. 416, 417; Leach 23, 372; 1 Lew. C. C. 11; 1 Moo. C. C. 19.

— (what is not). 2 Wash. (U. S.) 435; 9 Ala. 79; 30 *Id.* 14; 22 Ga. 237; 59 Ind. 300; 6 Dana (Ky.) 295; 12 Cush. (Mass.) 270; 6 City H. Rec. (N. Y.) 9; 1 Ired. (N. C.) L. 375; 12 Ohio St. 466; 1 Serg. & R. (Pa.) 347; 33 Tex. 517; 44 *Id.* 43; 2 Car. & K. 913; 1 Cox C. C. 282; 2 Moo. & R. 531.

— (plea of son assault). 1 Bay (S. C.) 350.

— (to justify battery). 1 Wheel. Am. C. L. 503.

— (with intent to kill, indictment for). 4 Cranch (U. S.) C. C. 334.

ASSAULT AN OFFICER, (in a statute). 4 T. R. 492.

ASSAULT AND BATTERY, (what constitutes). 5 Allen (Mass.) 507; 2 Ky. L. Rep. 364; 13 Wend. (N. Y.) 663.

ASSAULTED, (in pleading). 6 East 395.

ASSAY.—(1) In old English law, a testing of weights and measures by comparison with standards known to be correct.—*Reg. Orig.* 280. Also a testing of commodities such as bread, cloths, &c.—*Burrill.* (2) In modern law, the mode of testing or ascertaining the purity or fineness of gold and silver.

ASSAYER.—One whose business it is to make assays of the precious metals.

ASSAYER OF THE KING.—An officer of the royal mint, appointed by Stat. 2 Hen. VI. c. 12, who received and tested the bullion taken in for coining; also called *assayator regis*.—*Cowell; Termes de la Ley.*

ASSAY OFFICE.—A department attached to the national mint, and to each of its branches, in which gold and silver bullion and foreign coin are assayed, and cast into bars, or turned into the mint to be converted into coin.

ASSECURARE.—To assure, or make secure by pledges, or any solemn interposition of faith.—*Cowell; Spel. Gloss.*

ASSECURATION.—Assurance; marine insurance.

ASSEDATION.—In Scotch law, a term used to indicate a lease or letting for hire; also a *feu*, or letting under which the rent was payable in grain or money, instead of military service.

ASSEMBLED AND CONGREGATED, (in a charter). 1 Barn. & C. 492; 12 East 31.

ASSEMBLY.—FRENCH: *assemblée*.

The meeting together at one time and place, of a number of persons. (1) The right of the people to assemble together for the purpose of deliberating on their rights is guaranteed by the constitution (Amend. Art. I.) Such an assembly is called a "popular assembly" or "mass meeting." (2) The popular, or lower legislative house, in many of the States is also called the "Assembly" or "House of Assembly," but the term seems to be an appropriate one to designate any political meeting required to be held by law. As to unlawful assemblies, *see* that title.

ASSENT.—LATIN: *ad*, to, and *sentire*, to think.

Approval of, or agreement with something done. A contract is incomplete until the party to whom the offer is made assents to it (5 Bing. N. C. 75), and, in England (and some of the States), the title of a legatee is not complete until the executor has assented to the legacy, and hence executors may dispose even of property specifically bequeathed if they have not assented to the bequest. The assent may be express or implied; almost any language or conduct acknowledging the right of the legatee, or from which it appears that there is nothing to prevent the legatee from having his legacy, amounts to an assent. After the assent the legatee's title to the legacy is complete, and if the

legacy is specific he may bring an action to recover the property bequeathed. In many instances, where a transaction is manifestly for one's benefit or advantage, his assent thereto will be presumed: so where an assignment for creditors is made, the assent of the assignee to act will generally be presumed; as will the assent of a grantee to a conveyance of land, or of a devisee, where there is no charge or incumbrance on the land devised, &c., &c.

ASSENT, (of an executor). 3 Barn. & Ad. 875; 1 Chit. Gen. Pr. 549; 1 Str. 70, 74; 7 Taunt. 217.

—— (of grantee). 10 Pet. (U. S.) 9.

—— (of voters, to enable city, etc., to become stockholder). 50 Miss. 735.

ASSENT IN WRITING, (in a statute). 114 Mass. 540.

ASSENT TO, (in United States constitution). 4 Gill & J. (Md.) 5, 129.

ASSES, CATTLE, (in statute of crimes). 1 Moo. C. C. 3; 2 Russ. Cr. L. 498.

ASSESS—ASSESSMENT.—*LAW* FRENCH: *asseoir*; LATIN: *assessamentum*.

§ 1. **Damages, value, &c.**—To assess damages, or the value of property, or some other unascertained sum, is to fix its amount. Thus, where judgment by default is obtained in an action for detention of goods or pecuniary damages, the value of the goods or the amount of the damages must be ascertained before the judgment can be executed, and in cases where land is taken by the exercise of the right of eminent domain (*q. v.*), the damages to which the owner is entitled are ascertained by assessment. Assessment is effected by a writ of inquiry (*q. v.*), or by any mode of trial by which a question arising in an action may be tried, *e. g.* by a jury, referee, &c., and in cases of taking land for public use, generally, by commissioners appointed to value the land taken.

§ 2. **Taxes** in respect of land and houses are calculated with reference to the estimated value of the property, which is arrived at by a process called assessment.

§ 3. **Shares.**—In the law of corporations, assessments are instalments of the subscription price of shares subscribed for by the persons assessed, called for from time to time as money is needed by the corporation. In England, these assessments are denominated "calls" (*q. v.*)

§ 4. **Local improvements.**—The determination of the proportionate amount

which each of several landowners must pay towards the expense of a local improvement in a municipal corporation, and the computation of the damages to which they may be entitled for land taken, or other injury sustained by reason of such improvement, are also termed "assessment."

§ 5. **In insurance.**—(1) The determination of the amount to be contributed in general average (*q. v.*) is called an "assessment," as is also (2) periodical calls upon the makers of premium notes (*q. v.*) by mutual fire insurance companies, under the provisions of their charters and by-laws. See INSURANCE.

§ 6. In all the foregoing instances of the use of the word, assessment has obtained by universal usage two distinct meanings: (1) the process by which a certain result is reached, and (2) the result itself, *i. e.* the means or process of the computation, and the amount arrived at and to be paid over. Some writers distinguish assessment from "taxation," but the distinctions stated seem to be more ingenious than practical. There is one difference, however, more satisfactory, *i. e.* taxation, in its broadest sense, means a system of raising revenue with which to carry on the government, while assessment (in the first meaning just given) is merely a method or process for carrying that system into effect.

ASSESS, (means "estimate"). 49 Ala. 159.

ASSESSED, (in act of incorporation). 13 Vr. (N. J.) 99.

—— (in charter provision respecting taxes). 13 Vr. (N. J.) 98, 99.

—— (in a statute). 2 Serg. & R. (Pa.) 268.

ASSESSMENT, (defined). 29 Ind. 329; 5 Ohio St. 243.

—— (distinguished from "tax"). 1 Hand. (O.) 464.

—— (synonymous with "tax"). 7 Md. 517.

—— (authority to levy). 4 Neb. 336.

—— (for street improvement). 54 Cal. 306; 21 Minn. 526.

—— (in business corporation). 21 Ill. 276.

—— (of land, for taxes). 30 La. An. Part II. 1272.

ASSESSMENTS, (defined). 2 Cin. (O.) 67; 27 Wis. 599.

—— (covenant to pay). 5 Wend. (N. Y.) 618.

—— (distinguished from "taxes"). 3 Dutch. (N. J.) 185.

—— (in a charter). 6 Vr. (N. J.) 157.

—— (in a lease). 10 Johns. (N. Y.) 96; 11 Id. 443.

—— (in a statute). 8 Vr. (N. J.) 406; 11 Johns. (N. Y.) 77; 2 Serg. & R. (Pa.) 268.

ASSESSMENTS, (in a will). 9 C. E. Gr. (N. J.) 359.

— (in municipal charter). 7 Vr. (N. J.) 58, 478.

ASSESSOR.—(1) In the Scotch and civil law, a skilled person, or expert in some science unsolved in the trial of a cause, who sat with the judge and gave him advice. In England it is the practice of the High Court and Court of Appeal in admiralty business (following the practice of the Court of Admiralty) to call in assessors, in cases involving questions of navigation or seamanship. They are called "nautical assessors," and are always Brethren of the Trinity House.* (2) An officer appointed to make assessments.

ASSESSOR, (defined). 10 Mass. 116.

— (to compute amount due under direction of court). 100 Mass. 191, 193.

ASSETS.—NORMAN-FRENCH: *asetz*, *asset*, enough or satisfaction; LATIN: *ad* and *satis*. Brit. 192b; Littré, Dict. s. v. *Assez*. See MARSHALLING.

§ 1. **Generally**, assets are property available for the payment of the debts of a person or corporation. The term is sometimes applied to the property of a living person, *e. g.* a bankrupt or a married woman whose property has vested in her husband, and to the extent of which he is liable for her debts or liabilities contracted before marriage. It is, however, more often applied to the property of a deceased person, or of a partnership or company which has ceased to carry on business, and is being wound up. See DISSOLUTION; ESTATE; WINDING-UP.

§ 2. **Of deceased person.**—The assets of a deceased person are of various kinds, according as they consist of real or personal estate belonging absolutely to the deceased, or of property over which he

had merely a power of appointment. Real assets are such as descend to the heir; the lands or other real property of the deceased which are liable for payment of his debts, whether he has devised or charged them for that purpose, or not. (Wms. Real Prop. 82; Wms. Real Ass.) Personal assets are such as pass to the representative, and do not descend to the heir. The distinction between the various classes of assets is of importance with reference to the order of their administration, where the residuary estate is insufficient for payment of all the debts. See ADMINISTRATION.

§ 3. **Legal and equitable.**—Another division of assets is into legal and equitable. Legal assets comprise everything which an executor takes *virtute officii*, and with which he would have been charged in an action at law by a creditor, while equitable assets are such as could only be reached by the creditor in a court of equity. Thus, personal estate, including leaseholds, is legal assets, while land charged or devised by a testator for payment of debts, and equitable interests in or trusts of chattels, &c., are equitable assets.†

§ 4. **Assets by descent** are lands which descend to an heir charged with the debts or obligations of his ancestor. The term was originally used in the law of warranty (*q. v.*) to signify land which descended to an heir of equal value to land as to which his ancestor had entered into a warranty: thus, if A. was heir to his mother, subject to his father's estate by the curtesy, and the father aliened the land with warranty and died, this warranty did not bar A.'s title to the land without assets in fee simple, *i. e.* unless land in fee simple of equal value descended to him from his father. (Stat. 6 Edw. I.; Litt. § 724; Co. Litt. 365a, 374b.) The term "assets by descent" was afterwards applied where a man died leaving debts by specialty in which his heirs were bound, in which case his heir was liable to pay the debts, so far as he had

* Under the Judicature Act, 1873, the High Court, or Court of Appeal, may call in the aid of one or more assessors, in any action or matter, (Sect. 56; Rules of Court, xxxvi.); and by the Appellate Jurisdiction Act, 1876, provision is made for the appointment and attendance of the archbishops and bishops of the Church of England, as assessors of the Judicial Committee of the Privy Council, in ecclesiastical appeals. (Sect. 14; Reg. Gen. Nov. 15th, 1876; 2 P. D. 384.) Assessors are also employed in various inquiries of a judicial character, *e. g.* in courts of survey and investigations by wreck commissioners, under the Merchant Shipping Act, 1876. (As to assessors in county court actions, see Poll. C. C. Pr. 105.) An assessor differs from a referee (*q. v.*) in having no voice or power in

deciding questions, his duties being confined to assisting the deliberations of the court.

† The distinction is of importance in England, with reference to the estates of persons who died before the 1st January, 1870, because in the case of such a person leaving an insolvent estate his debts are payable out of the legal assets in a different order from equitable assets. (2 White & T. Lead Cas. 101.) In the case of any person dying on or after the 1st January, 1870, his debts, whether by specialty or simple contract, are paid *pari passu* out of the assets without priority one over another (Stat. 32 and 33 Vict. c. 46), and there is, therefore, no distinction between legal and equitable assets in such cases. See Wata. Comp. Eq. 29.

assets by descent, i. e. to the value of the land which descended to him. (Wms. Real Prop. 80.) Now, that all the land left by a deceased person is liable for his debts, the term "assets by descent" has been supplanted by "real assets."

§ 5. **Assets entre mains.**—Assets in hand. Assets in the hands of a personal representative or trustee, applicable to the payment of claims against the estate. *Termes de la Ley*; 2 Bl. Com. 510.

ASSETS, (defined). 2 Sandf. (N. Y.) 202, 219; Lovel. Wills 45.

— (a reversion is). 1 Salk. 354; 2 Wils. 49.

— (a reversion in fee left in the mortgagor, legal). 2 Atk. 294.

— (by descent). 2 Saund. 8 d. n. (g.)

— (debt of executor to estate is). *Coxe* (N. J.) 153.

— (immediate). 2 Ld. Raym. 733.

— (in a plea). 1 Cro. 23, 55.

— (in hands of executor). 1 Salk. 79.

— (lands out of State are not). 9 Mass. 396.

— (of bankrupt, what are). 16 Bankr. Reg. 351.

— (of deceased debtor). 2 Cranch. (U. S.) 407.

— (of deceased person). 1 Stor. Eq. Jur. § 531.

ASSETS IN HAND, (what are). 1 Chit. Gen. Pr. 532.

ASSEVERATION.—The proof which a man gives of the truth of what he says, by appealing to his conscience as a witness.—*Bouvier*.

ASSIGN.—See **ASSIGNMENT**, §§ 1, 2, 5.

ASSIGN, (defined). Lofft 318.

— (means "grant"). 19 N. H. 487.

— (distinguished from "pay"). 4 Md. Ch. 153.

— (a bill of exchange, by blank indorsement). 13 Serg. & R. (Pa.) 316.

— (by indorsement in blank) 1 Bay (S. C.) 400.

— (covenant not to). 4 Wheel. Am. C. L. 34.

— (in an agreement to). 1 Ves. & B. 8; 15 Ves. 265.

— (in an assignment of an apprentice). 12 Mod. 554.

— (in an indenture of apprenticeship). *Browne* (Pa.) 180.

— (in a deed-poll). 5 Barn. & C. 589, 609.

— (in a lease). 2 Atk. 219; Cro. Jac. 393; 3 Keb. 364; 5 Taunt. 795; 6 Ves. 471; 1 Ves. & B. 191; 15 Johns. (N. Y.) 278.

— (in a statute) 23 Wis. 295.

— (in a will). 3 Ves. 149.

ASSIGN, (in instrument under seal). 24 Wend (N. Y.) 72.

— (in the transfer of a bond). 17 Serg. & R. (Pa.) 402.

ASSIGN AND CONVEY, (agreement to). 4 E. C. L. 22; 8 Taunt. 62.

ASSIGN AND RELEASE, (in a deed). 10 Johns (N. Y.) 456.

ASSIGN AND TRANSFER, (in an agreement). 1 Mod. 113.

ASSIGN OR UNDERLET, (in a lease). Amb. 480; 3 Bro. C. C. 632; 4 Co. 119 b; Cro. Eliz. 815; 8 East 185; 5 Taunt. 249, 795; 2 T. R. 425; 8 Id. 57, 300; 14 Ves. 173.

ASSIGN, TRANSFER AND SET OVER, (covenant not to). 3 Com. Dig. 281.

— (in an assignment). 2 Bouv. Inst. 420.

— (in a lease). 2 W. BL 767; 3 Wils. 234.

ASSIGNABLE.—That which is susceptible of transfer by assignment; transferable; negotiable.

ASSIGNABLE, (in a marriage settlement). 9 Ves. 310.

ASSIGNABLE, NOT, (meaning of). 63 Barb. (N. Y.) 279.

ASSIGNATION.—A Scotch law term equivalent to assignment (*q. v.*)

Assignatus utitur jure auctoris: An assignee uses the right of his principal—i. e. he is clothed with the rights of the assignor.

ASSIGNED, (in a covenant). 1 Dall. 444.

— (in insurance policy). 16 Barb. (N. Y.) 511; 1 Robt. (N. Y.) 501.

— (in Iowa code). 1 Iowa 154; 7 Id. 435.

— (promissory note, allegation in complaint). 19 Minn. 335.

ASSIGNED AND APPOINTED, (in a statute). 1 Green (N. J.) 321.

ASSIGNEE.—A person to whom an assignment is made, and the term is therefore usually applied to personal property; it is, however, sometimes applied to realty; thus, we speak of the assignee of a reversion. (1 Davids. Con. 125.) Assignees of personal property may be divided into three classes—(1) those to whom property is transferred by an ordinary assignment *inter partes*, either in writing or by parol; (2) assignees for the benefit of creditors, to whom property is assigned by a debtor, for distribution among his creditors under State laws; and (3) assignees in bankruptcy, appointed or chosen under the provisions of a general bankrupt law.*

* In the old English bankruptcy law, assignees filled a similar place to that now occupied by trustees. By Stat. 6 Geo. IV. c. 16, the estates of bankrupts were administered by persons chosen by the creditors, and to whom the bankrupt's property was assigned by the commissioners for that purpose; they were hence, usually

called "assignees," or "creditors' assignees." (Robt. Bankr. 4.) By Stat. 1 and 2 Will. IV. c. 56, official assignees were introduced; they were permanent officials, who, before their appointment, must have been engaged in commerce, &c., and one of them acted in each bankruptcy jointly with the creditors' assignees. *Id.* 5

See ASSIGNMENT FOR BENEFIT OF CREDITORS; BANKRUPTCY; INSOLVENCY.

ASSIGNEE, (defined). Hob. 9, 10, 25, 27.
 — (administrator not, under statute). 31 Ark. 643.
 — (executor is not, when). 3 Hun (N. Y.) 419; 23 Wis. 295.
 — (in a lease). Dyer 6a; Plowd. 192, 288.
 — (in a statute). 4 Blatchf. (U. S.) 206; 23 Wis. 295.
 — (not chargeable with personal covenant of assignor). 5 Co. 17b.
 — (of chose in action). 5 Wheat. (U. S.) 277; 19 Wend. (N. Y.) 73; 24 *Id.* 70; 4 T. R. 340.
 — (of a patent). 4 Wash. (U. S.) 584.
 — (of stock, how far liable for instalment in arrear). 19 Wend. (N. Y.) 41.
 — (transferee of note by delivery, not). 15 Pet. (U. S.) 125.

ASSIGNMENT.—**NORMAN-FRENCH**: *assigner* (Britt. 248a, 251a), from Latin, *assignare*, to mark out, allot.

§ 1. Assign, like grant (*q. v.*), is a general word signifying a transfer of property; thus we speak indifferently of granting or assigning a reversion in land. (*See Woodf. L. & T.* 220, 232.) An assignment is the act of assigning, or the instrument by which it is done.

§ 2. **Personal estate, &c.**—In its more special sense, to assign is to transfer personal estate, or chattels real, or certain rights in real or personal estate. The term is especially applied to leases, terms of years, estates for life in land or personal property, and to choses in action, and incorporeal chattels. The word "assign" is the proper technical operative word, but any expression showing an intention to make a complete transfer will constitute an assignment. (2 *Dauids. Conv.* 212; *Shep. Touch.* 266.) An assignment by way of sale is an absolute assignment for money; an assignment by way of mortgage is one made as security for a debt or the like, *e. g.* a bill of sale (*q. v.*)

§ 3. **Form of.**—Assignments of leases and terms of years must be by deed; assignments of choses in action and incorporeal personal property do not as a rule require to be by deed. In the case of policies of life and marine assurance, notice of the assignment must be given to the insurance company; in the case of patents and copyrights, the assignment must be registered.

§ 4. **Choses in action.**—Formerly choses in action were not assignable at law, except in a few cases (*e. g.* bills of exchange), but choses in action arising from contract (such as debts) were assignable in equity. It was, however, necessary for the assignee to give notice of the assignment to the debtor, trustee or stakeholder, in order to prevent him from paying the money to the original creditor (the assignor) or some subsequent assignee. Thus, if A. owed B. a debt, and B. assigned it to C., the assignment was not complete as between C. and A. until notice of it had been given to A. And C. took the debt subject to any prior equities (*e. g.* an agreement between A. and B. by which the debt was affected). Such assignments of choses in action were called equitable assignments. Now an absolute assignment in writing of a legal chose in action is effectual at law as well as in equity, provided notice is given to the debtor, trustee, &c. *See* 2 *White & T. Lead. Cas.* 707; *Fish. Mort.* 84; 3 *Q. B. D.* 569.

§ 5. **Assignment of dower.**—Assign is also sometimes used in its primary sense of marking out, allotting. Thus, in ordinary cases, before a widow can take possession of any of her husband's land as tenant in dower, her part must be assigned to her, either by agreement between her and the heir, or by the sheriff, in execution of a judgment obtained by her. (*Co. Litt.* 34b.) As to where assignment is not necessary, *see* *Litt.* § 43. *See* **DOWER; METES AND BOUNDS.**

§ 6. **Of waste.**—Common of estovers and turbary is sometimes limited to those parts of the waste which are assigned, *i. e.* pointed out by the owner from time to time for the purpose. 13 *Co.* 68.

§ 7. **In bankruptcy proceedings.**—The transfer of the bankrupt's estate to the assignee in bankruptcy (*q. v.*)

ASSIGNMENT, (defined). 11 *Barb.* (N. Y.) 634; 1 *Chit. Gen. Pr.* 319.

— (what it includes). 1 *Iowa* 582; 34 *N. Y.* 447.

— (does not necessarily require writing). 1 *Green* (N. J.) 247.

— (by an order). 1 *Pick.* (Mass.) 463.

— (for creditors). 22 *Wend.* (N. Y.) 483; 68 *Mo.* 435.

— (of an apprentice). 7 *Mass.* 145; 1 *Green* (N. J.) 223; 2 *Id.* 321; 5 *Cow.* (N. Y.) 363; 19 *Johns.* (N. Y.) 113; 5 *Binn.* (Pa.)

426; 3 Serg. & R. (Pa.) 158; 4 *Id.* 109; 1 Wheel. Am. C. L. 415.

ASSIGNMENT, (of a bond). Penn. (N. J.) 20, 24, 30, 1032; 2 Wash. (Va.) 219.

——— (of a bond or note). 2 Rand. (Va.) 465.

——— (of book debt). 3 Day (Conn.) 364; 2 Wheel. Am. C. L. 470.

——— (of certificates of stock). 10 Mass. 482.

——— (of chose in action). 5 Wheat. (U. S.) 277; 9 *Id.* 913; 8 Johns. (N. Y.) 152.

——— (of a contract). 12 Mass. 281.

——— (of a corporeal chattel, by appropriation). 5 Binn. (Pa.) 398.

——— (of a debt). 4 Taunt. 326.

——— (of a debt, by bill of exchange). 12 Mass. 206.

——— (of a debt, by letter). 3 Barn. & C. 842.

——— (of a debt, by parol). 2 Rose 271.

——— (of dower). 1 Pick. (Mass.) 189, 314; 10 Wend. (N. Y.) 415, 533; 5 Bos. & P. 1.

——— (of insurance policy). 9 Wend. 163, 404; 17 *Id.* 631.

——— (of interest in insurance policy). 6 Wheel. Am. C. L. 205.

——— (of interest in mortgage). 4 Wheel. Am. C. L. 293.

——— (of a judgment). 15 Mass. 481.

——— (of a lease). 7 Johns. (N. Y.) 211; 6 Wheel. Am. C. L. 404.

——— (of lease, by parol). 15 Wend. (N. Y.) 408.

——— (of a mortgage). 2 Day (Conn.) 474; 2 Gill & J. (Md.) 36; 15 Mass. 236; 4 Rawle (Pa.) 255.

——— (of a mortgage, by deed). 2 Me. (2 Greenl.) 334.

——— (of a mortgage, by parol). 7 Wheel. Am. C. L. 80.

——— (of mortgages and accounts). 9 Ves. 410.

——— (of mortgagor's bond). 2 Day (Conn.) 425.

——— (of mortgage, without the bond). Sax. (N. J.) 135.

——— (of one of several bonds, without the mortgage). 17 Serg. & R. (Pa.) 400; 3 Wheel. Am. C. L. 181; 7 *Id.* 78.

——— (of open account, effect of, in Maryland). 1 Wheel. Am. C. L. 172.

——— (of an order). 4 Me. (4 Greenl.) 384.

——— (of a patent). 4 Mas. (U. S.) 15; 7 Wheel. Am. C. L. 278.

——— (of a promissory note). 6 Me. (6 Greenl.) 212, 219; 10 Mass. 316; 13 *Id.* 304.

——— (of sealed instrument). 2 Wheel. Am. C. L. 422; 3 *Id.* 177, 179.

——— (of a ship and cargo). 1 Atk. 160.

ASSIGNMENT, ACTUAL OR POTENTIAL, (of a ship, freight and earnings). 5 Mau. & Sel. 228.

ASSIGNMENT FOR BENEFIT OF CREDITORS.—An assignment whereby a debtor transfers to another (generally one of his creditors) his property, in trust to be applied to the payment of his debts. The assignment is **general**,

when it conveys all the debtor's property and does not prefer any creditor or class of creditors above the others; and, (2) **with preferences**, when certain creditors are directed to be first paid before making any division of the assets among the others. In some States assignments with preferences are not allowed, and the whole subject is so fully regulated by local statutes which differ essentially one from another, that reference to the insolvent laws of the several States, must be made in order to get a correct view of the subject.

ASSIGNMENT OF BREACHES, or ERRORS.—*See* BREACH; ERROR.

ASSIGNMENT OF DOWER.—*See* ASSIGNMENT, § 5.

ASSIGNOR.—One who makes an assignment, either a simple assignment, or an assignment for the benefit of creditors.

ASSIGNOR, (grantor of land, not). 39 Barb. (N. Y.) 360; 28 N. Y. 508.

——— (in New York code). 4 E. D. Smith 78; 10 How. Pr. 94; 34 N. Y. 447.

——— (of a promissory note). 10 How. (N. Y.) Pr. 555; 3 Bosw. (N. Y.) 369; 2 E. D. Smith (N. Y.) 112.

——— (transferror of non-negotiable note is). 3 Abb. (N. Y.) Pr. 93; 16 Barb. (N. Y.) 580.

——— (vender of chose in action, not). 3 Bosw. (N. Y.) 450.

ASSIGNS.—Assignees; persons to whom property has been transferred. In a conveyance to "A., his heirs and assigns," or "A., his executors, administrators, and assigns," &c., the word "assigns" is in reality mere surplusage, because the estate or interest passes without it. (*See* WORDS OF LIMITATION.) In a covenant by "A., his heirs and assigns," the word "assigns" includes all those who take either immediately or remotely from or under A., whether by conveyance, devise, descent or other act of law, *e. g.* as assignee from A.'s heir, or as heir to A.'s assignee, and so on, (L. R. 4 Q. B. p. 186; 5 Co. 17 b; *see* COVENANT); and whether they take the fee-simple, or merely a limited interest, *e. g.* by lease. 11 Ch. D. 273.

ASSIGNS, (does not indicate a fee). 19 N. Y. 344.

——— (in act of incorporation). 7 T. R. 36.

——— (in a bill obligatory). 2 Halst. (N. J.) 90.

- ASSIGNS**, (in a bond). 14 Mass. 108.
 — (in a covenant). 6 Wheel. Am. C. L. 406; Burr. 1272; L. R. 4 Q. B. 180.
 — (in a deed). 2 W. Bl. 1185; Co. Litt. 210 a.
 — (in a devise). 34 Ala. 349; 2 Halst. (N. J.) 377; 3 Green (N. J.) 409; Cowp. 232; Lovel. Wills 156; Perk. Conv. § 557.
 — (in fire policy). 1 Am. L. Reg. 18; 1 Curt. (U. S.) 193.
 — (in a lease). 7 Cow. (N. Y.) 287; 1 Cro. 26, 657; 1 Com. Dig. 695, *n* (b); 3 Mau. & Sel. 353; Plowd. 284 a, 288; 12 Ves. 513; 3 Wils. 27.
 — (in a statute). 4 Halst. (N. J.) 169.
 — (administrators or, in a statute). 17 Ch. D. 8, 9.
 — (in a will). 8 R. I. 36; Hardr. 11; Lofft 319.
 — (the survivor, or his). 28 Miss. 246.

ASSISA.—In old English and Scotch law, an assize; a kind of jury or inquest; a writ; a sitting of a court; an ordinance or statute; a fixed or specific time, number, quantity, quality, price or weight; a tribute, fine or tax. The word frequently appears in the old writers in such phrases as, **assisa armorum**, a statute ordering the keeping of arms for the public defence; **assisa cadere**, to be nonsuited; **assisa continuanda**, a writ to continue the assize so that papers may be produced; **assisa de Clarendon**, the statute of Clarendon, passed 10 Hen. II.; **assisa de foresta**, a statute concerning the royal forests, passed 34 Edw. I.; **assisa de mensuris**, a rule of weights and measures, adopted 8 Ric. I.; **assisa de nocumento**, an assize of nuisance; **assisa fuscæ fortisæ**, (*see* ASSIZE OF FRESH FORCE); **assisa juris utrum**, a writ for the recovery of church lands; **assisa mortis antecessoris**, (*see* ASSIZE OF MORT D'ANCESTOR); **assisa novæ disseisinæ**, (*see* ASSIZE OF NOVEL DISSEISIN); **assisa panis et cerevisiæ**, a statute regulating the sale of bread and ale, passed 51 Hen. III.; **assisa proroganda**, a writ staying proceedings in certain cases; **assisa ultimæ præsentationis**, (*see* ASSIZE OF DARREIN PRESENTMENT); **assisa venalium**, a regulation of the sale of necessities, fixing quality, quantity, price and weight.

ASSISE, or **ASSIZE**.—**NORMAN-FRENCH**: *assise*, from Latin *assidere*, to sit together, either as a legislative or as a judicial assembly.

Assise, or assize, anciently signified a legislative enactment; some old statutes

and ordinances are still so called, *e. g.* the assize of bread, the assize of Clarendon, the assize of the forest, &c. Litt. § 234. *See* the extracts in Stubbs's Charters 137 *et seq.*

§ 1. **Assises of land**.—An assise passed in the reign of Henry II. (probably the assise of Northampton, 1176) provided for the trial of questions of seisin and title to land by a recognition or inquiry of twelve men sworn to speak the truth: hence the proceedings, and the jurors themselves, became known as the "assises." Some assises were called from the objects for which they were brought (such as the assise of common of pasture, to recover seisin of a common of pasture), but more often from the occasions which gave rise to them, *e. g.* the assises of novel disseisin, mort d'ancestor, &c. Litt. § 234; 1 Reeve Hist. Eng. Law 86, 342 *et seq.*; Digby Hist. R. P. 79. *See* the following titles.

§ 2. **Trials at the assizes**.—*Magna Carta* provided that assises of novel disseisin and mort d'ancestor should only be taken in the shires where the lands lay, and for this purpose justices were sent into the country once a year: hence they were called "justices of assize." Afterwards the Statute of Nisi Prius (13 Edw. I. c. 30) enacted that the justices of assize should try the issues in ordinary actions in the counties in which they arose, and return the verdict to the court at Westminster. Hence trials before judges on circuit are said to take place at the assizes (*see* CIRCUIT; NISI PRIUS), where also are held trials under commissions of "oyer and terminer" and "gaol delivery" (*q. v.*) (1 Reeves Hist. Eng. Law 245; Sm. Ac. (11th edit.) 134. Justices of assize, oyer and terminer and general gaol delivery, also have jurisdiction in criminal matters formerly within the jurisdiction of the High Court of Admiralty. Stat. 7 and 8 Vict. c. 2.) The assizes, therefore, are for criminal as well as civil business. The judges also sit under a commission of the peace. The assizes are usually held twice a year, after the Hilary and Trinity sittings, but in some parts of the country winter assizes are also held in the vacation after Michaelmas sittings, chiefly for criminal trials. (3 Steph. Com. 351; Winter Assizes Act, 1876; Spring Assizes Act, 1879.) The jurisdiction of the courts created by commissions of assize, of oyer and terminer, and of gaol delivery, is now vested in the High Court of Justice. (Jud. Act, 1873, §§ 16, 29.) The judges of assize for each county are appointed by special commission from the crown, and are hence also called "commissioners of assize;" they must be selected from the judges of the High Court and the Court of Appeal, or from the serjeants-at-law and queen's counsel. *Id.* § 37.

ASSIZE OF DARREIN PRESENTMENT, or last presentment, was a real action, which lay where a man (or his ancestors under whom he claimed) had presented a clerk to a benefice, who was instituted, and afterwards, upon the next avoidance, a stranger presented a clerk, and thereby disturbed the real patron. It was abolished by Stat. 3 and 4 Will. IV. c. 27, having been previously superseded in practice

by the action of *quare impedit* (q. v.) 3 Bl. Com. 245.

ASSIZE OF FRESH FORCE.—A writ which lay for a man disseised, by the custom of the city or borough. Fitz. N. B. 7.

ASSISE OF MORT D'ANCESTOR.—A real action which lay to recover land of which a person had been deprived on the death of his ancestor by the abatement or intrusion of a stranger. (3 Bl. Com. 185; Co. Litt. 159 a. See ABATEMENT, § 2.) It was abolished by Stat. 3 and 4 Will. IV. c. 27.

ASSISE OF NOVEL DISSEISIN.—A real action which lay to recover land of which a person had been *recently* disseised. (3 Bl. Com. 187; Co. Litt. 159 a.) It was abolished by Stat. 3 and 4 Will. IV. c. 27. It was called *assisa nove disseisinæ* because the judges on circuit only tried questions of disseisin which were new, *i. e.* which had arisen since the last eyre. Co. Litt. 153 b.

ASSISUS.—Rented for a certain assessed rent in money or provisions.

ASSISTANCE.—See WRIT OF ASSISTANCE.

ASSISTANCE, (writ of). 21 Wall. (U. S.) 289.
—— (writ of, when issues). 21 Cal. 87.

ASSISTANT JUDGE.—A judge of the English Court of General or Quarter Sessions in Middlesex: he differs from the other justices in being a barrister of ten years' standing, and in being salaried. Stat. 7 and 8 Vict. c. 71; 22 and 23 Vict. c. 4; Pritch. Quar. Sess. 31.

ASSISTING AND DIRECTING, (in an indictment for larceny). Russ. & R. C. C. 343.

ASSIZE COURT, (described). 13 Ad. & E. N. S. 736; 6 Hurlst. & N. 717.

ASSIZES.—See ASSISE, § 2.

ASSIZES DE JERUSALEM.—A code of feudal jurisprudence prepared by an assembly of barons and lords A. D. 1099, after the conquest of Jerusalem.

ASSOCIATES.—Officers formerly attached to the Queen's Bench, Common Pleas and Exchequer divisions of the High Court. "Their duties require them to be in court whenever the judges . . . are sitting at Nisi Prius. They make out the cause list, empanel the jury, call on the causes, read aloud any documents put in and required to be read, &c." (Second Report Legal Dep. Comm. 14.) By the Judicature (Officers) Act, 1879, the existing associates were converted into Masters of the Supreme Court, and the office of associate abolished.

ASSOCIATE JUDGE, (defined). Lush. Pr. 569.

ASSOCIATES, (in charter of corporation). 25 Minn. 387.

—— (in a statute). 11 Cush. (Mass.) 369.

—— (in the title of a society). 12 Mass. 541.

ASSOCIATING WITH, (in an annuity). 1 Taunt. 417.

ASSOCIATION.—LATIN: *ad*, to, and *socius*, a companion.

A word of vague meaning, used to indicate a collection of persons who have joined together for a certain object. It is applied sometimes to large partnerships or unincorporated companies, and sometimes to corporations formed not for profit, but for some scientific, charitable, or similar purpose. Companies Act, 1867, § 23. See ARTICLES OF ASSOCIATION; COMPANY; CORPORATION; MEMORANDUM OF ASSOCIATION; PARTNERSHIP.

ASSOILE.—See ABSOILE.

ASSORTED CARGO, (in charter party). 1 Robt. (N. Y.) 287; 40 N. Y. 259.

ASSUME, (mortgage, in a deed). 12 Cush. (Mass.) 227.

ASSUMPSIT.—LATIN: "he promised."

§ 1. **In law of contracts.**—A promise or undertaking, either express or implied, made either orally, or in writing, not under seal. It is **express** when the party distinctly undertakes to do a certain thing, or to pay a certain sum; it is **implied** where the law presumes the promise from the acts of the party or the circumstances of the case.

§ 2. **Action of.**—The common law form of action for the recovery of damages for breach of a simple contract, *i. e.* a promise not under seal, (Dicey Part. 24); a species of action on the case. (Steph. Pl. 18.) When brought upon an express promise it is called "special," when on an implied promise, "general assumpsit." It lies, chiefly, for money lent, paid, or received, a balance due on account, goods sold, services rendered, use and occupation, &c.

ASSURANCE—ASSURE.—

§ 1. **Conveyance.**—"Assure" and "assurance" are the old words for "convey" and "conveyance" (q. v.). (See Shepp. Touch. *passim*.) They are still used in this sense in the "covenant for further assurance," which generally occurs in conveyances at the present day. See COVENANT.

§ 2. **Insurance.**—"Assure" and "assurance" are also equivalent to "insure" and "insurance" (q. v.)

ASSURANCE, (covenant to make). 1 Bulstr. 90; 2 Cro. 517, 718; Holt 177; Ld. Raym. 750; 1 Sid. 467; 1 T. R. 229; 4 Id. 761; Yelv. 45.

ASSURANCE, (covenant of, in a deed). Cro. Jac. 251; 4 T. R. 500.

— (in an agreement for sale of land). T. Raym. 190.

— (in Bills of Sale Act). 5 Ex. D. 24.

— (in criminal statute). 3 Halst. (N. J.) 333.

— (in a mortgage). 3 Bro. C. C. 598.

ASSURE, (an estate, covenant to). 1 Cro. 825.

ASSURED.—One whose life or property has been insured; one whom a policy of insurance indemnifies against loss.

ASSURED, (in sense of insured). 2 East 385.

ASSURER.—An insurer, or underwriter.

ASSYTHMENT, or ASSYTHEMENT.—In the Scotch law, an indemnity to the relatives or heirs of a person killed, paid by the killer.—*Bell*. This may be recovered in Scotland, by an action similar to the civil action for causing death lately authorized by statute in many of the States.

ASTITUTION.—An arraignment (*q. v.*)

ASTRARIUS.—In old English law, a person in actual possession of a house. Thus, *astrarius haeres*, an heir in actual possession of the house of his ancestor. Bract. 85, 267 b.

ASTRICT—ASTRICTION.—In Scotch law, to bind. Lands are said to be astricted (bound) to a particular mill, when the grain grown on them must be ground there.

ASTRIHILTHET.—In Saxon law, a compensation or penalty paid for a wrong done by one having the king's peace.—*Spel. Gloss*.

ASYLUM, (for blind, not educational institution, under statute). 6 Neb. 286.

AT, (synonymous with "in" or "within"). 6 Paige (N. Y.) 554, 562; 1 Scam. (Ill.) 329.

— (synonymous with "near"). 22 N. H. 53; 4 Vt. (N. J.) 299.

— (in articles of association of railroad company). 35 Barb. (N. Y.) 373.

— (in a bill of exchange). 1 Campb. 407; 4 *Id.* 115, 117.

— (in a charter). 3 Cranch (U. S.) C. C. 599; 8 East 23.

— (in contract to be performed at a place named). 1 Bos. & P. 524.

— (in a lease). 5 T. R. 564; 7 *Id.* 676.

— (in a policy of insurance). 9 Mass. 87; 3 Taunt. 299.

— (in a railroad charter). 5 Allen (Mass.) 221; 6 Paige (N. Y.) 554.

— (in a statute). 50 Ala. 172; 53 Pa. St. 62.

— (in a will). 3 Mau. & Sel. 171; 16 Ves. 314.

AT A CERTAIN TIME, (in a statute). L. R. 10 Q. B. 371.

AT A PLACE NEAR, (in a road charter). 18 Johns. (N. Y.) 397.

AT AND FROM, (in charter of corporation). 3 Cranch (U. S.) C. C. 599, 606.

— (in marine insurance policy). 3 Cranch (U. S.) 357; 7 *Id.* 327; 1 Mas. (U. S.) 127; 1 Pet. (U. S.) 184; 3 Mass. 331; 11 Pick. (Mass.) 56; 1 Cai. (N. Y.) 75; 3 *Id.* 16; 2 Cai. (N. Y.) Cas. 172; 5 Johns. (N. Y.) 318; 8 *Id.* 1; 3 Johns. (N. Y.) Cas. 10; 6 Cow. (N. Y.) 270; 24 Wend. (N. Y.) 212; 1 Binn. (Pa.) 592; 2 Am. Dec. 130, 134, *n.*; 3 Kent Com. 307, 308, *n.*; 1 Duer Ins. 167, § 14; 1 Atk. 548; 7 Barn. & C. 14; 1 Campb. 505, 508; 2 *Id.* 235; 3 *Id.* 84; Cowp. 601; 4 East 130; 4 Esp. 25; L. R. 1 Ex. 206; L. R. 5 C. P. 155; L. R. 9 Q. B. 451; 6 T. R. 424; 8 *Id.* 562.

AT AND UNDER, (in a lease). 4 Car. & P. 3.

AT CHAMBERS, (averment in indictment that motion for new trial was made). 122 Mass. 454.

AT LARGE.—(1) Not limited to any particular question or matter. (2) Free; unrestrained; as a ferocious animal so free from restraint as to be liable to do mischief.—*Burrill*.

AT LARGE, (in marine insurance). 2 Cai. (N. Y.) Cas. 158.

— (in statute authorizing the killing of dogs running at large). 10 Metc. (Mass.) 382; 10 Allen (Mass.) 151.

AT LARGE WITHOUT A KEEPER, (as used in a statute). 63 Me. 468.

AT LAW.—According to the common law; in the law. Thus, an "action at law" is a common law action. The phrase is also frequently used in connection with "attorney," "barrister," "counselor," "serjeant," &c.

AT LAW, (in a statute). 2 Ired. (N. C.) Eq. 584.

AT LEAST, (as indicating on which side an uncertainty lies). 8 Watts & S. (Pa.) 464, 470.

AT MY SON'S DEATH, (in a will). L. R. 3 H. L. 121.

AT OR ABOUT, (in description of land). 1 Green (N. J.) 103.

AT OR AFTER, (in a bequest). 2 Mad. Ch. 14.

AT OR BEFORE, (in a statute). 9 Wend. (N. Y.) 255; 2 Atk. 100; 8 T. R. 371.

AT OR NEAR, (in application for a road). 3 Harr. (N. J.) 271.

— (in description of land). 1 Harr. (N. J.) 105.

— (in a devise). 3 Barn. & Ad. 453.

— (in a railroad charter). 6 Paige (N. Y.) 554.

AT OR NEAR ANY TOLL-GATE, (in a statute). 12 N. Y. Week. Dig. 240.

AT OR UPON, (a day named). 3 Har. & M. (Md.) 85; 2 Wheel. Am. C. L. 415.

AT OR WITHIN, (in a will). 8 Ch. D. 758.

AT OWNER'S RISK, (in a contract). L. R. 9 C. P. 325.

AT PAR, (in a statute). 22 Pa. St. 479.

AT SEA, (in a statute). 1 Story (U. S.) 251, 259.

AT SEA, (in marine insurance policy). 8 Am. L. Reg. 362; 14 Mass. 31; 20 Pick. (Mass.) 275; 12 Gray (Mass.) 501, 519; 103 Mass. 241; 3 Hill (N. Y.) 118; 7 *Id.* 321; 6 Whart. (Pa.) 247, 255.

— (when vessel deemed). 7 Am. Dec. 182, 187, *n.*; 1 Bouv. Inst. 486.

AT SUCH TIME AND MANNER, (in power of sale in a will). 19 Ves. 337.

AT THAT TIME, (in a will). 12 East 589.

AT THE DATE OF ITS PASSAGE, (in act of congress). 2 Ct. of Cl. 448.

AT THE DAY, (in a plea). Yelv. 215.

AT THE DECEASE OF A., (in a will). 1 Str. 17.

AT THE END, (of a year). 49 N. H. 161.

AT THE PARISH OF, (in an indictment). 8 Rob. (La.) 513.

AT THE RISK OF THE MASTER AND OWNERS, (in contract by owners of tug-boat). 8 N. Y. 375.

AT THE TERM, (in attachment act). 85 Ill. 138.

AT THE TERMINI, (in railroad tax act). 9 Vr. (N. J.) 299.

AT THE TRIAL, (in a statute). 2 Barn. & C. 621; 5 C. P. D. 139.

AT THE WAREHOUSE, (in contract to deliver goods). 4 Wheel. Am. C. L. 54.

AT THE WHOLESALE FACTORY PRICES, (in a promissory note). 2 Conn. 69.

AT THIS DATE, (in a receipt). 11 Ind. 341.

AT TWENTY-ONE, (in a bequest). 1 Bro. Ch. C. 91; 8 Com. Dig. 1032; 9 Ves. 225.

— (in a devise). 3 Atk. 427; 4 Mass. 208; 2 Vern. 417.

— (in a will). 6 Ves. 245; 7 *Id.* 421.

ATAMITA.—The sister of a great-grandfather's grandfather.

ATAVIA.—A great-grandfather's grandmother.

ATAVUNCULUS.—The brother of a great-grandfather's grandmother.

ATAVUS.—A great-grandfather's grandfather.

ATHA, ATHE, ATTA, or ATTE.—In Saxon law, an oath.—*Cowell*; *Spel. Gloss.*

ATHEIST.—GREEK: *a*, without, and *θεος*, God.

One who denies, or does not believe in the existence of a God. At common law an atheist is not a competent witness; but

this rule has been abrogated in some and modified in others of the States. 1 Greenl. Ev. § 369, *n.*

ATILIU.—The tackle or rigging of a ship; the harness or tackle of a plow.—*Spel. Gloss.*

ATMATERTERA.—The sister of a great-grandfather's grandmother.

ATNEPOS.—See **ADNEPOS**.

ATNEPTIS.—See **ADNEPTIS**.

ATPATRUUS.—The brother of a great-grandfather's grandfather.

ATTACHÉ.—One attached to the suite of an ambassador; one attached to a foreign legation.

ATTACHÉ, (to legation). Baldw. (U. S.) 234, 239, 240.

ATTACHED, (by an officer). 16 Mass. 181, 318, 420.

— (in return on writ). 11 Pick. (Mass.) 341.

— (in record on the issue-roll). 1 Saund 318.

— (to a regiment). 11 Mass. 389.

ATTACHMENT.—OLD FRENCH: *attacher*, to hold fast, apprehend. Skeat's Etym. Dict. *s. v.*

To attach a person is to arrest him under a writ called a "writ of attachment;" to attach property is to seize it or place it under the control of a court, by means of a writ or warrant of attachment. Thus the word "attachment" is descriptive both of the proceeding itself, and of the writ or instrument by which it is effected.

§ 1. **Of the person.**—Attachment of the person may be resorted to to compel the appearance of a defendant, or attendance of a witness; to bring before the court a person charged with contempt, or abuse of process, violation of orders of court, &c. It differs from arrest, in that bail is not taken, but the person attached is produced before the court, to be dealt with according to the nature of the case.*

* In England, attachment of the person is of two kinds—that employed in ordinary cases of disobedience to an order, judgment, &c. or other contempt of court committed in the course of a suit, and that employed where no suit is pending. The former kind is one mode of enforcing obedience to the orders of the High Court of Justice, such as injunctions, orders for discovery and production, and certain judgments. The writ is issued by leave of the court, or a judge, on notice to the person concerned, and directs the sheriff to arrest him. (See Dan. Ch. Pr. 386

et seq. As to attachment in admiralty practice, see Wms. & B. Adm. 299 *et seq.*) The contemnor then remains in prison until he has cleared his contempt, or is discharged. An attachment to enforce payment of a sum of money can only be issued in the cases mentioned in the Debtors' Act, 1869, *e. g.* against a defaulting trustee. The other kind of attachment is issued to punish disobedience to the queen's writs, contempt of court, disobedience to the rules or awards of a court, abuse of the process of a court, forgeries of writs, &c. Its peculiarity is, that it "may be

§ 2. Of property.—The laws of the several States relating to the attachment of property, are by no means uniform; thus, in the New England States, it is permitted at the commencement of all actions *ex contractu*, while in others, grounds, such as non-residence, concealment, &c., of the defendant, must be shown by affidavit, before the writ or warrant will be granted, and a bond or undertaking executed, with surety, by the plaintiff, conditioned for the payment by the latter, to the former, of all damages he may sustain by reason of the attachment. In a few of the States attachments are obtainable in actions sounding in tort. The levy of an attachment gives rise to a lien upon the property attached, whether it be found in the possession of the defendant or a third person, which lien is enforceable, after judgment, by execution; the attachment itself, however, is dissolved by a judgment for the defendant, and in some States he may dissolve it by giving a bond for the payment of such judgment as plaintiff may obtain. Attachments are sometimes called "domestic," where the defendant is a resident, and "foreign," where he is a non-resident of the State. In some States this process is called "factorizing" (*q. v.*), in others, "garnishment" (*q. v.*), and in others, "trustee process" (*q. v.*)*

ATTACHMENT, (defined). 8 Conn. 334; 12 Mass. 495; 13 *Id.* 116.

awarded by the discretion of the justices, upon a bare suggestion, or of their own knowledge, without any appeal, indictment, or information," (2 Hawk. P. C. xxii.); if it is awarded on the complaint of a private person, the latter is called the prosecutor (*Id.* § 1), and the proceedings generally take the following course: the prosecutor moves for a rule for an attachment, and on this being granted, a writ of attachment issues, which commands the sheriff to attach (*i. e.* arrest) the defendant; on the sheriff returning *cepi corpus*, a motion, of course, is made for a *habeas corpus* to produce the defendant in court, and the prosecutor then moves that the defendant be sworn to answer interrogatories; the defendant, if he does not give bail, is then returned to prison; the interrogatories, which in effect contain the charge against the defendant, are filed, and the defendant is examined on them before a master, and the examination is referred to the queen's coroner and attorney, on whose report the court sentences the defendant to fine or imprisonment, or discharges him. (Chit. Pr. (12th edit.) 1710 *et seq.*) Order xlv. of the Rules of Court, provides that a writ of attachment shall have the same effect as a writ of

ATTACHMENT, (of goods). 5 Mass. 163; 11 *Id.* 319.

—— (of a meeting-house pew). 13 Mass. 128.

—— (of a ship). 14 Mass. 195.

—— (when a proceeding *in rem*). 2 Brock (U. S.) 125; 39 Pa. St. 50.

ATTACHMENT AGAINST GOODS, (in bankruptcy act). 17 Ch. D. 666.

ATTACHMENT OF PRIVILEGE.—

In English law, (1) a process by which attorneys and others formerly privileged to sue and be sued in a particular court, called the adverse party into that court. (2) A writ issued for the arrest of a person in a privileged place.—*Termes de la Ley*.

ATTAIN, (if he should, in a will). 16 East 412.

ATTAINDER.—That extinction of civil rights and capacities which formerly took place when judgment of death or outlawry was recorded against a person who had committed treason or felony. The two principal consequences were the forfeiture and escheat of the land and goods belonging to the criminal (*see* ESCHEAT; FORFEITURE), and the corruption of his blood, by which was meant that he became incapable of holding or inheriting land, or of transmitting a title by descent to any other person. These consequences of attainder were mitigated by various acts of parliament, until the Stat. 33 and 34 Vict. c. 23 wholly abolished attainder, corruption of blood, forfeiture, and escheat, for treason or felony, preserving them, however, in the case of outlawry. *See* 1 Steph. Com. 442; 4 *Id.* 454; Wms. Real Prop. 126; Shelf. R. P. Stat. 456.

ATTAINDER, (defined). Penn. (N. J.) 764, 766.

ATTAINDER, BILL OF, (in United States constitution). 4 Dall. 14, 18; 4 Wall. (U. S.) 333; 8 *Id.* 595; Penn. (N. J.) 766.

attachment in chancery; it seems to be considered by some writers that this abolishes the old common law practice above described.

* Attachment of property is of importance in England in two cases—attachment of debts, and attachment in the Mayor's Court. Attachment of debts is a proceeding employed in actions in the High Court where a judgment for the payment of money has been obtained against a person to whom money is owing by another person; in such a case, the judgment creditor, on application to a judge at chambers, may obtain an order that all debts owing or accruing from that person (who is called the "garnishee") to the judgment debtor shall be attached to answer the judgment debt. The effect of this order is to bind the debt in the hands of the garnishee as soon as he is served with the order, so that he cannot deal with it until the judgment creditor's claim is disposed of. If he does not dispute the debt, he must either pay it over to the judgment creditor, or pay the amount into court. (Rules of Court xlv.; Sm. Ac. 207.) As to attachment in the Lord Mayor's or City of London Court.

FOREIGN ATTACHMENT.

ATTAINT.—*LATIN*: *attinctus*, stained, "for that if the petty jury be attainted of a false oath they are stained with perjury." *Co. Litt.* 294 b, 391 b.

(1) A person was said to be attaint when he was under attainder (*q. v.*) (*Co. Litt.* 390 b.)
(2) An attaint, or writ of attaint, was anciently a proceeding "to enquire whether a jurie of twelve men gave a false verdict, that so the judgment following upon it may bee reversed, and the partie restored to all that he hath lost." (*Finch Law* 484.) For this purpose a jury (called the "grand jury") was summoned by a writ of attaint to try the validity of the verdict of the first, or, as it was called for distinction, the "petty jury," and if the second jury's verdict was contrary to the first, not only was the first verdict set aside, but the first jury lost all civil rights and became liable to many barbarous punishments. Proceeding by attaint was abolished by 6 Geo. IV. c. 50, § 60. (*Sm. Ac.* 173.) At the present day, when a verdict is suspected of being false or erroneous, a motion is made for a new trial. *See TRIAL.*

ATTAINT, (in Stat. 3 Hen. VII. c. 1). 3 Mod. 156.

ATTEMPT.—*LATIN*: *ad*, to, and *tentare*, to strive.

An attempt to commit a crime is an act done beyond mere preparation, with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted or were successful. It is immaterial whether the offender voluntarily desists from the actual commission of the crime or not. Every attempt to commit an offence is a misdemeanor, unless it is otherwise specially provided for. Attempts to commit murder and some other crimes are felonies. (*Steph. Crim. Dig.* 29; 1 *Russell on Crimes* 188.) In some jurisdictions, if, on the trial of a person indicted for a felony or misdemeanor, it appears to the jury that he did not commit the offence, but only attempted it, the jury may acquit him of the offence, and find him guilty of the attempt, as if he had been indicted for it. Stat. 14 and 15 Vict. c. 100, § 9; *Archb. Cr. Pl.* 176.

ATTEMPT, (defined). 11 Ala. 57; 4 Conn. 17.
—— (as including "intent"). 38 Tex. 382.
—— (distinguished from "intent"). 14 Ala. 411.

—— (in an indictment). 6 Serg. & R. (Pa.) 398.

—— (made an offence by statute). 6 Pet. (U. S.) 465.

—— (to bribe, what constitutes). 1 Pa. L. Gaz. 455.

—— (to commit crime). 82 Ill. 191; 5 *Cush. (Mass.)* 367; 5 *Park. (N. Y.) Cr.* 102; 6 *Gratt. (Va.)* 716.

ATTEMPT, (to discharge a pistol with intent to kill, what is not). 5 *Park. (N. Y.) Cr.* 105.

—— (to enter blockaded port). 4 *Cranch (U. S.)* 185; 1 *Binn. (Pa.)* 304.

—— (to sell, in chattel mortgage). 4 *Biss. (U. S.)* 128.

ATTEMPT TO ADMINISTER, (in an indictment). 4 *Car. & P.* 369.

ATTEMPTING, (distinguished from "persisting in an intention"). 4 *Cranch (U. S.)* 185.

ATTEND TO MY BUSINESS, (in power of attorney). 6 *Yerg. (Tenn.)* 167.

ATTENDANT.—Owing some duty or service; waiting, or depending upon, as a court attendant.

ATTENDANT TERM.—*See TERM.*

ATTENDING PHYSICIAN, (in life insurance policy). 37 *N. Y.* 580.

ATTENTAT.—In the civil and canon law, any thing wrongfully innovated or attempted to be done in a suit, pending an appeal, by the judge *a quo*.—*Ayl. Par.* 100.

ATTENTION, (in a letter concerning a bill). 2 *Barn. & Ald.* 113.

ATTERMINE.—To put off to another term; to extend the time for the payment of a debt.—*Blount; Cowell.*

ATTERMINING.—Extending the time within which to pay a debt.

ATTERMOIEMENT.—A term used in the canon law, to signify an arrangement in the nature of a compromise or composition.

ATTEST—ATTESTATION.—*LATIN*: *ad*, to, and *testari*, to witness.

§ 1. **Generally.**—To attest is literally to witness any act or event, but the term is now exclusively applied to the signature or execution of a document. When A. executes a deed in the presence of B., and B. signs his name on the document as a token of his having witnessed A.'s execution, B. is said to attest the execution. The term is even more commonly applied to wills than to deeds. A clause called an "attestation clause" is generally written at the foot of the instrument as a declaration by the attesting witnesses that the instrument was signed or executed in their presence. If the document is required to be strictly proved, the attesting witnesses must prove its execution, unless they are dead or cannot be found (in which case proof of their handwriting must be given), or unless the document is admitted. *Best Ev.* 306, 669.

§ 2. An attested copy of a document seems to be an examined copy, with a certificate or memorandum of its correctness, signed by the persons who have examined it. *See* COPY.

ATTEST, (what is implied by the term). 9 Mees. & W. 404.

— (a note or other instrument). 16 Mass. 290.

— (a power of sale). 4 Taunt. 223.

ATTESTATION, (of affidavit, by corporation). 2 Green (N. J.) 443.

— (of a deed). 2 Bl. Com. 307; 2 Car. & P. 325; 1 Steph. Com. 495; 9 Mees. & W. 404.

ATTESTATION CLAUSE.—*See* ATTEST, § 1.

ATTESTATION OF THE WITNESSES IN THE TESTATOR'S PRESENCE, (in statute of wills). 5 Mass. 227.

ATTESTED, (defined). 13 Barb. (N. Y.) 17.

— (distinguished from "executed," "published"). 13 Barb. (N. Y.) 23.

ATTESTED ACCOUNT, (in a statute). 21 Wend. (N. Y.) 399; 22 *Id.* 400.

ATTESTED COPY, (of reasons of appeal). 119 Mass. 158.

ATTESTING, (a will). 6 Bing. 310; 7 *Id.* 457; 3 Burr. 1773; 2 Car. & P. 488; 8 Com. Dig. 409; 8 Ves. 180, 504; 11 *Id.* 240.

ATTESTING WITNESS.—One who, at the request of the parties to a written instrument, signs his name thereto as a witness to the execution thereof.

ATTESTING WITNESS, (who may be). 115 Mass. 599.

ATTESTOR OF A CAUTIONER.—In the Scotch law, one who attests the sufficiency of a cautioner and agrees to become *subsidiarie* liable for the debt.—*Bell; Burrill.*

ATTORN—ATTORNMENr.—NORMAN-FRENCH: *attourner*, (Britt. 106 a, 176 a.) from the Latin *tornare*, to turn in a lathe. (1 Diez 418.) *Attourner* was used not only to signify the acceptance of a new lord by the tenant, but also the transfer of the tenant's services by the old lord to the new, (Britt. 106 a, 176 a.) so that the primary sense of the word seems to be to change or assign.

§ 1. Generally.—Attornment is the agreement of the owner of a particular estate in land to become the tenant of a person who has acquired the estate next in reversion or remainder, or the right to the rent or other services by which the land is held. (Co. Litt. 312 a.) Thus, if A., being entitled to land in fee-simple, grants a lease of it to B., then B. is A.'s tenant. If, however, A. conveys his reversion to C., in this case B. does not stand in the relation of tenant to C., unless he agrees or

consents to become his tenant. "And this yielding of consent is called an attornment." (Shepp. Touch. 253; Litt. § 551.) It may be either express (in deed) or implied (in law); thus, if the tenant, after notice of the grant of the reversion, pay his rent to the grantee, this is a good attornment in law. Shepp. Touch. 262; and see 3 Halst. (N. J.) 315.

§ 2. To stranger.—In England, by Stat. 11 Geo. II. c. 19, § 11, attornments made by tenants to strangers claiming title to the estate of their landlords are null and void, and their landlord's possession not affected thereby unless made with their privity and consent, or in pursuance of a judgment or order. The statute proceeds: "or to any mortgagee after the mortgage has become forfeited." These words refer to the old form of mortgage on condition, and are apparently inapplicable to a modern mortgage. The question, however, has been deprived of importance by Stat. 4 Anne c. 16.

§ 3. On assignment of reversion, &c.—Formerly attornment was necessary in most cases to perfect the grant of a reversion or remainder, so that the grant was ineffectual until it was given. (Shepp. Touch. 253; Litt. § 558 *et seq.*) Hence, means were appointed in certain cases to compel the tenant to attorn. (Touch. 254, 256.) Now, however, by the Stat. 4 Anne c. 16, § 9, such grants are effectual without the attornment of any of the tenants, and the grantee of a reversion may sue or distrain on the tenants for the rent if he has given them notice of the grant. Woodf. Land. & T. 243; 1 Sm. Lead. Cas. 629.

§ 4. In mortgage.—Where a mortgage of land or buildings is executed with the intention that the mortgagor shall remain in possession, it is (or was before the recent act) usual to insert in the mortgage a clause of attornment by which the mortgagor attorns tenant to the mortgagee at a rent equal to the yearly interest on the debt, or sometimes in excess of the interest, so as to go towards reduction of the principal. The chief advantage of this is to give the mortgagee a right of distress if the interest (or principal) is not paid. Such an attornment is now a bill of sale within the meaning of the Bills of Sale Act, 1878, and consequently if the mortgage is not registered, and the mortgagor becomes bankrupt, the mortgagee would be unable to seize any of his chattels. § 6. *See* L. R. 6 Eq. 575; Pope B. of S. 12.

ATTORNEY.—"An ancient English word, and signifieth one that is set in the turne, stead, or place of another; and of these some be private . . . and some be publike, as attorneys-at-law." Co. Litt. 51 b, 128 a; Britt. 285 b.

§ 1. Private, or attorney in fact.—A private attorney is a person appointed by another to act in his place, or represent him for a certain purpose: the document

by which the appointment is made is called a "power or letter of attorney." See AGENT; POWER OF ATTORNEY; PROXY; SYNDIC.

§ 2. **Attorneys-at-law** were formerly persons admitted to practice in the superior courts of common law; they conducted proceedings in those courts for suitors who did not appear in person. (3 Bl. Com. 25.) In practice every attorney was also a solicitor (*q. v.*), and was only called an attorney in formal proceedings in the common law courts. Now, by the Judicature Act, 1873, the expression "attorney" is abolished, and the title "Solicitor of the Supreme Court of Judicature" is substituted. (Jud. Act, 1873, § 87.) The term is still in use in America, and in most of the States includes "barrister," "counsellor," and "solicitor," in the sense in which those terms are used in England. In some States, as well as in the United States Supreme Court, "attorney" and "counsellor" are distinguishable, the former term being applied to the younger members of the bar, and to those who carry on the practice and formal parts of the suit, while "counsellor" is the adviser, or special counsel retained to try the cause. In some jurisdictions one must have been an attorney for a given time before he can be admitted to practice as a counsellor.

ATTORNEY, (defined). 10 Barb. (N. Y.) 547.
 — (distinguished from "counsellor"). 1 Sandf. (N. Y.) 569; 1 E. D. Smith (N. Y.) 318.
 — (does not include practitioners in justices' courts). 8 Barb. (N. Y.) 355.
 — (when means "attorney-at-law"). 2 La. Ann. 839; 6 *Id.* 706; 16 *Id.* 575.
 — (appearance by, in justice's court). 14 Wend. (N. Y.) 161; 15 *Id.* 215, 652.
 — (authority by warrant of). Barnes 48.
 — (contract by, when binds principal). 23 Wend. (N. Y.) 440; 10 *Id.* 87; 4 Wheel. Am. C. L. 226; 7 *Id.* 442.
 — (covenant by, in a deed). 11 Serg. & R. (Pa.) 129.
 — (execution of deed by). 9 Co. 76; 2 East 142; 14 Raym. 1418; 6 T. R. 176; 7 Mass. 14.
 — (in a statute). 4 Ala. 615; 6 Blackf. (Ind.) 420; 1 E. L. & E. 250; 15 Jur. 554; 20 L. J. Q. B. 17.
 — (note signed as). 8 Pick. (Mass.) 56.
 — (plea of privilege). 1 Bos. & P. 4; 4 Burr. 2109; 2 Dow. P. C. 51; 1 Salk. 1; 7 T. R. 25; 1 Wils. 298; 2 *Id.* 232; 2 W. Bl. 1085.
 — (power of). 1 J. J. Marsh. (Ky.) 295; 8 Pick. (Mass.) 490; 7 Wheel. Am. C. L. 397; 1 Jac. & W. 180.

ATTORNEY, (power of, to seal deeds). 9 Wend. (N. Y.) 56, 76; 22 *Id.* 649.

— (power of court to punish, for misconduct). 13 Wall. (U. S.) 335.

— (release executed in name of). 20 Wend. (N. Y.) 251.

— (suit against, for money collected). 15 Wend. (N. Y.) 302.

ATTORNEY IN FACT, (as distinguished from "attorney-at-law"). 47 Barb. (N. Y.) 116.

— (signature to a deed). 4 Hen. & M. (Va.) 184.

ATTORNEY OR AGENT, (in arbitration statute) 3 Serg. & R. (Pa.) 2.

ATTORNEY OR ATTORNEYS, (in power of attorney). 5 Pet. (U. S.) 132; 7 Wheel. Am. C. L. 393.

ATTORNEY-GENERAL.—

§ 1. **Of the United States.**—An officer appointed by the president, and a member of his cabinet. He is the chief law officer of the government, his duties being to prosecute and defend all suits in the supreme court, in which the general government is interested, and to advise the president and heads of departments, upon matters of law submitted to him. His opinions on such matters are published in a series of *quasi* reports, known as the "Opinions of the Attorneys-General."

§ 2. **Of the States.**—There is also an attorney-general in each State, or an officer having similar powers, whose duty it is to appear for the State, and perform such functions as the statutes of the State prescribe.

§ 3. **In England**, the attorney-general is the principal counsel of the crown. As counsel, he is bound to conduct prosecutions and other legal proceedings on behalf of the crown, if required to do so. He also acts as representative of the crown in matters connected with charities, patents, and in criminal proceedings instituted by government. His functions are, however, political, as well as legal, for he is almost invariably a member of the House of Commons, and is appointed to his office on the advice of the government for the time being; there is therefore a change of attorney-general on every change of government. In the House of Commons he answers questions on legal matters of public interest, and has charge of government measures relating to legal subjects. The Prince of Wales has an attorney-general, and when there is a queen consort she has one also. 3 Steph. Com. 274; 5 P. D. 114.

ATTORNTMENT.—See ATTORN.

AU BESOIN.—In case of need. A French phrase sometimes incorporated in a bill of exchange, to indicate where payment may be sought, in case the drawee fails or refuses to pay the bill. Story Bills § 65.

AUCTION.—*LATIN: auctio, from augere, to increase.*

A vendue, or public sale of property to the last increaser of the price, or highest bidder; generally conducted by a person licensed for that purpose, and called an "auctioneer" (*q. v.*) In sales by auction, of real estate, it is unlawful, where a sale is stated to be without reserve, for the vendor to employ a person to bid at the sale, but the vendor may, in the particulars or conditions of sale, reserve the right to bid, and employ a person to bid accordingly. At common law the employment of a puffer made a sale by auction void, in all cases: the rule has been altered by statute so far as sales of real estate are concerned, but still applies in England to sales of goods. As to the American rules upon this subject the statutes of the several States should be consulted.

AUCTION, (defined). 48 Barb. (N. Y.) 109, 113.

—— (bid by letter). 3 Bibb (Ky.) 367.

—— (in a statute). 48 Barb. (N. Y.) 113; 28 Ohio St. 479; 1 Barn. & Ald. 100; 1 Dow. 111.

—— (in city ordinance). 18 Kans. 271.

—— (sale of land at). 1 Pet. (U. S.) 138, 145.

AUCTIONARIUS.—One who bought and sold again at an increased price; an auctioneer.—*Spel. Gloss.*

AUCTIONEER.—One who conducts an auction; one authorized or licensed by law to sell lands or goods at public auction.

AUCTIONEER, (defined). 9 Wheat. (U. S.) 647; 12 *Id.* 443; 63 Ind. 468; 2 H. Bl. 555.

—— (distinguished from "jobber"). 4 Sandf. (N. Y.) Ch. 587.

—— (agent for both parties). 16 Wend. (N. Y.) 28; 20 *Id.* 431.

—— (authority of, as agent). 2 Taunt. 46.

—— (in Stat. 19 Geo. III. ch. 36, §§ 3 and 4). 13 Price 636.

AUCTOR.—In the Roman law, an auctioneer. In the civil law, a grantor or vendor of any kind.

Audi alteram partem: Hear the other side. Do not condemn a man unheard.

AUDIENCE.—*LATIN: audire, to hear.*

A hearing. See COURT OF AUDIENCE.

AUDITA QUERELA.—In the old common law practice, a writ given in order to afford a remedy to the defendant in

an action where matter of defence (such as a release) had arisen since the judgment, and on which the defendant applied to the court, whence the name *audita querelâ defendantis* (Archb. Pr. 510; 2 Wms. Saund. 439; 3 Bl. Com. 405), "the defendant's complaint having been heard." The proceeding by *audita querelâ* is abolished in England, the present practice being to apply for a stay of execution or other relief against the judgment. (Rules of Court xlii. 22.) It is still retained in some of the States in which the common law practice yet prevails, but generally, the relief is granted upon motion as in England. See 15 Am. Dec. 692, 695, *n.*

AUDIT, (in a statute). 3 Den. (N. Y.) 391.

AUDITED, (in a statute). 60 How. (N. Y.) Pr. 260.

AUDITOR.—*LATIN: audire, to hear.*

(1) A government official upon whom rests the duty to inspect the accounts of disbursing officers, and to audit or examine claims against the government before their payment. (2) An officer (generally more than one) appointed by the court in actions involving accounts, to examine the accounts between the parties, and to ascertain and report the balance.

AUDITOR, (defined). 100 Mass. 193.

—— (appointed by consent of parties). 6 Cranch (U. S.) 8.

—— (in State constitution). 51 Wis. 636.

AUGMENTATION.—(1) An old English court erected 27 Hen. VIII. empowered to hear and determine suits and controversies relative to abbeys and monasteries; it was abolished in the reign of Queen Mary. (2) The increase of the revenue of the crown, arising from the suppression of monasteries, and the confiscation of their property.

AULA REGIA, or AULA REGIS.—The king's hall or palace. The name of a supreme court established by William the Conqueror in his own hall or palace. For an account of this court see *Bouvier*, and the references there given.

AULNAGE.—See ALNAGE.

AULNAGER.—See ALNAGER.

AUNCCEL WEIGHT.—An ancient mode of weighing. "A kind of weight with scales hanging, or hooks fastened to each end of a staff, which a man lifting up upon his forefinger or hand, discerneth the quality or difference between the weight and the thing weighed." It was finally abolished by Stat. 22 Car. II.—*Wharton*.

AUNT.—The sister of either parent.

AUTER ACTION PENDANT.—

Another action pending. In pleading, either at law or in equity, the plea of another action pending for the same demand is a good defence, and if sustained abates the action in which it is interposed. See **ABATEMENT**, § 5.

AUTER DROIT.—A person is said to be entitled to something in *auter droit*, i. e. in right of another, when he is entitled in a representative capacity, e. g. as trustee, executor, guardian, &c. See **MERGER**; **RIGHT**.

AUTER VIE.—See **TENANT FOR LIFE**.

AUTHENTIC ACT.—A civil law term for an act (*q. v.*), e. g. a deed, contract, &c., executed before an authorized officer or notary; or attested by a public seal, &c. The phrase is also in use in Louisiana. See *La. Civ. Code*, Art. 2231.

AUTHENTIC ACT, (of notary). 9 Pet. (U. S.) 625.

AUTHENTICATION.—Attestation, or certification. Thus, a document or record is said to be authenticated when it is properly attested or certified by an authorized person, so as to be admissible in evidence in the courts. See **FOREIGN JUDGMENT**; **RECORDS**.

AUTHENTICATION, (of certificate on a mortgage). 19 Ohio St. 291.

AUTHENTICS.—(1) An anonymous collection and translation of the novels of Justinian. (1 Mack. Civ. L. § 72, n. (c).) (2) Extracts from the novels inserted in the Code and Institutes. *Id.* n. (b).—*Burrill*.

AUTHOR, (under copyright law). 2 Blatchf. (U. S.) 39, 40; 4 *Id.* 125; Taney (U. S.) 72; 4 Wash. (U. S.) 48; L. R. 3 H. L. 100.

AUTHORITIES.—Constitutional provisions, statutes, decisions of courts, and opinions of text-writers, cited or referred to, as sustaining a rule of law contended for.

AUTHORITY.—

§ 1. **Generally.**—A person is said to be authorized or to have an authority when he is in such a position that he can act in a certain manner (defined by the authority)—(1) without incurring the liability to which he would be exposed in

the absence of the authority; and (2) so as to produce the same effect as if the person granting the authority had himself done the act. Thus, if I authorize A. to sell goods for me, and he does so, he incurs no obligation as respects me for so doing, and confers a good title on the purchaser. See **AGENT**.

§ 2. **Express, implied, customary, statutory.**—With reference to the mode of its creation, an authority may be either express (as in the above instance), implied (or inferred), (*Sm. Merc. L.* 110, 125), implied in law, or customary, e. g. the right of the lord of a manor to make grants of land in the manor, (*Co. Litt.* 52b), or statutory, &c. See **FACTORS' ACTS**.

§ 3. **General, special, limited.**—With reference to its extent, an authority may be **general**, to act in all the principal's affairs, or **special**, concerning some particular object, e. g. to buy a particular piece of land; it may be **limited** by certain instructions as to the conduct he is to pursue, or **unlimited**, i. e. leaving his conduct to his discretion. *Sm. Merc. L.* 113. See **AGENCY**.

§ 4. **Naked; coupled with an interest.**—A mere, bare, or naked authority is an authority which exists only for the benefit of the principal, and which, therefore, the agent must execute in accordance with his directions, as opposed to an authority coupled with an interest, where the person vested with the authority has a right to exercise it, partly or wholly, for his own benefit. (*See Co. Litt.* 49b, 52b, 113a, 181b.) Thus, an authority to collect debts, given by the owner of a business on his assigning it to a purchaser, is an authority coupled with an interest, because the purchaser, by purchasing the business, has acquired the right to obtain the benefit of it. (*Chit. Cont.* 192.) A mere authority is revocable by the grantor at any time; one coupled with an interest is not. See **POWER**; **WARRANT**.

§ 5. **Administrative.**—In the English law relating to public administration, an authority is a body having jurisdiction in certain matters of a public nature. Thus, sanitary authorities have powers in relation to the public health; of a similar nature are prison authorities, local authorities for the execution of the Artizans' Dwellings Acts, &c., all of which have only a local jurisdiction. Lighthouse authorities, on the other hand, are divided into general

lighthouse authorities (*e. g.* the Trinity House), and local lighthouse authorities. *Merch. Shipp. Act*, 1854, § 389.

§ 6. **Of officers.**—The power conferred upon an officer, (*e. g.* a judge), to compel obedience to his commands or orders lawfully promulgated.

AUTHORITY, (coupled with an interest). 10 *Pct.* (U. S.) 564.

— (in a statute). 3 *Sandf.* (N. Y.) 137.

— (judicial, exercise of). 1 *Day* (Conn.) 328; 2 *Chit. Gen. Pr.* 153; 2 *East* 244; 8 *Id.* 319; 8 *T. R.* 454.

— (of agent of corporation). 3 *Wheel. Am. C. L.* 448.

— (of arbitrators). 6 *Mass.* 46; 6 *Serg. & R.* (Pa.) 166.

— (of commissioners in bankruptcy). 2 *W. Bl.* 1141.

— (of executors, to sell). *Co. Litt.* 112b, 113a; 15 *Wend.* (N. Y.) 610.

— (of a justice of the peace out of commission). 2 *Green* (N. J.) 26.

— (of majority of road commissioners). 5 *Binn.* (Pa.) 481.

— (revocation of). 3 *Halst.* (N. J.) 116.

— (to arbitrators, by submission). 1 *Wheel. Am. C. L.* 433.

— (to borrow money). 2 *Pick.* (Mass.) 345.

— (to executors, by devise). 3 *Day* (Conn.) 385.

— (to overdraw, distinguished from "permission"). 32 *Barb.* (N. Y.) 68.

— (to sell land). 6 *Cranch* (U. S.) 87.

— (to sell land, in a will). 3 *Binn.* (Pa.) 69.

— (used in the sense of "obligation"). 20 *Md.* 449, 468.

AUTHORITY TO SEVERAL, (to contract.) 12 *Mass.* 189, 194.

— (how exercised). 6 *Johns.* (N. Y.) 39; 21 *Wend.* (N. Y.) 178, 211; 23 *Id.* 324; 5 *Binn.* (Pa.) 481; 1 *Bay* (S. C.) 354; 1 *McCord* (S. C.) 60; 9 *Barn. & C.* 648; 1 *Bos. & P.* 229; 1 *Dow. & Ry.* 259; 9 *East* 246; 1 *Str.* 117; 3 *T. R.* 38, 380, 592; 2 *Vern.* 514; 19 *Ves.* 463; 2 *W. Bl.* 1017; *Yelv.* 27.

— (judicial). *Coxe* (N. J.) 144; 1 *Green* (N. J.) 268.

AUTHORIZE, (in charter of corporation). 12 *Wheat.* (U. S.) 52.

AUTHORIZED AND EMPOWERED, (agent of corporation, to sell real estate). 3 *Wheel. Am. C. L.* 450.

— (directors of company, to appoint agents). 7 *Conn.* 219.

— (in a statute). 56 *Barb.* (N. Y.) 452.

— (in a will). 5 *Ves.* 506.

AUTOCRACY.—An unlimited monarchy. A government at the will of one man, called an autocrat.

AUTONOMY.—A state of independence, in which exists the right of self-government.

AUTREFOIS ACQUIT.—Formerly acquitted. A plea in bar to a criminal prosecution, to the effect that the prisoner has been already tried for the same offence, before a court of competent jurisdiction, and has been acquitted. Such a plea, if true, is a good defence. The rejection of a bill of indictment by a grand jury is not an acquittal. *Archb. Cr. Pl.* 136; 4 *Steph. Com.* 401; 17 *Wend.* (N. Y.) 386. *See* PLEA.

AUTREFOIS ATTAINT.—Formerly attainted. A plea in bar to a prosecution. Formerly if a man was attainted of treason or felony, he could not be indicted for another felony while the attainder remained in force, because he was considered dead in law. But by the Stat. 7 and 8 Geo. IV. c. 28, § 4, attainder is no bar to an indictment, except for the same offence, and in effect the plea of autrefois attainder is now obsolete. *Archb. Cr. Pl.* 143.

AUTREFOIS CONVICT.—Formerly convicted. A plea in bar to a criminal prosecution, by which the prisoner alleges that he has been already tried and convicted for the same offence before a court of competent jurisdiction. Such a plea, if true, is a good defence. *Archb. Cr. Pl.* 140; 4 *Steph. Com.* 403.

AUXILIUM.—Aid or tribute paid by the feudal vassal to his lord. It was sometimes paid in money and sometimes in services.

AUXILIUM CURIAE.—An order of the court summoning one party, at the suit and request of another, to appear and warrant something.—*Bowyer*.

AUXILIUM REGIS.—A subsidy or toll-age paid to the king.—*Cowell*; *Spel. Gloss.*

AUXILIUM VICE COMITIS.—A duty formerly paid to sheriffs.—*Cowell*.

AVAIL OF MARRIAGE.—Value of marriage. A term used in the Scotch law.

AVAILABLE CAPITAL, (of company). *L. R.* 2 *H. L.* 99.

AVAILABLE MEANS, (as distinguished from "money"). 13 *N. Y.* 215.

— (in an assignment). 13 *N. Y.* 219.

AVAILS, (in a will). 22 *Wend.* (N. Y.) 139.

AVAL.—A term used in the French law, to designate the guaranty of a bill of exchange or promissory note.

AVENAGE.—A certain quantity of oats given, under the old English law, to a landlord, in lieu of rents or services.—*Cowell*.

ADVENTURE.—An accident or mischance causing the death of a man without felony.

AVER.—LATIN: *ad, to, and verum, the truth*; FRENCH: *avertir*.

To affirm, allege or assert; to declare positively. In pleading—to state facts positively and not by way of argument or inference. (See AVERMENT.) The primary meaning of aver was to verify or prove to be true, *e. g.* to aver a writ. Litt. § 691. See VERIFICATION.

AVER CORN.—A rent reserved to religious houses, to be paid by their tenants in corn.

AVER LAND.—Land ploughed and manured by the tenant for the use of the lord.

AVER PENNY.—Money paid in lieu of doing the king's averages. See AVERAGE, § 5.

AVERAGE.—ITALIAN: *avaría*, and DUTCH: *haverij, avarij*, signifying damage from perils of the sea; FRENCH: *avarie*; GERMAN: *havarie*, signifying (1) damage from perils of the sea; (2) harbor duty, whence it is said that the word comes from *hafen* or *haven*, a harbor; an ingenious and plausible suggestion is that it comes from the Arabic *awar*=damage, injury. Diez Etym. Wortb.; Littré Dict. *s. v.*

§ 1. In the ordinary sense of the word, average is where goods on board a ship, or part of the ship herself, are lost or damaged.

§ 2. **Simple or particular average.**—Simple, petty, or particular average is where any damage is done to the cargo or vessel by accident or otherwise, but not for the general benefit of the ship and cargo, such as the loss of an anchor or cable, the starting of a plank, the turning sour of a cargo of wine, "which are all losses which rest where they fall," (Maud. & P. Mer. Sh. 320, *n.* (h)); that is to say, the loss in each case is borne by the owner of the thing damaged or lost, or the person who has insured him. See MEMORANDUM.

§ 3. **General average.**—The term average, however, is usually applied to cases of general (or gross) average, which is a highly important branch of maritime law. General average is where any loss or damage is voluntarily and properly incurred in respect of the goods or of the ship for the general safety of the ship and cargo; in this event the law provides that an equitable adjustment and distribution of the loss shall be made between all the parties interested, each contributing his share. (Maud. & P. Mer. Sh. 320; Sm. Merc. L. 328; 3 Q. B. D. 425.) The simplest and oldest case of general average occurs where goods are thrown overboard in a storm for the purpose of saving the ship and the rest

of the cargo; here the several persons interested in the ship, freight and cargo must contribute rateably to indemnify the person whose goods have been sacrificed against all but his proportion of the general loss. (*Id.* 321.) This is the celebrated rule of the *Lex Rhodia de jactu*: "*Lege Rhodiæ cavetur, ut si levandæ navis gratia jactus mercium factus est, omnium contributiones sarciantur quod pro omnibus datum est.*" (Digest XIV. 2, fr. 1. See JETTISON.) So where a ship was in the course of her voyage run foul of by another ship, owing to the violence of the wind and weather, and was damaged, and the master was in consequence obliged to cut away part of the rigging, the expenses of repairs were held to be a general average. Maud. & P. Mer. Sh. 322; 3 Mau. & Sel. 482; 2 Q. B. D. 91, 295. See also 2 C. P. D. 578, 585; 5 Q. B. D. 286. See ADJUSTMENT; CONTRIBUTION.

§ 4. Average also denotes some petty charges, such as towage, beaconage, &c., which the owner or consignee of goods shipped on board a vessel is bound to reimburse the master or shipowner. It is generally stipulated for in the bill of lading. (Sm. Merc. L. 319.) In Molloy, however (p. 270), average, or petty average, is said to be "a small recompence or gratuity for the master's care over the lading." The etymology of the word in this sense is unexplained.

§ 5. A service by horse or carriage anciently due to the lord from a tenant.

§ 6. Stubble, or remainder of straw and grass left in corn-fields after harvest.—Abbott.

AVERAGE, (general, defined). 4 Mass. 548.
—— (in a contract). 117 Mass. 523.
—— (in insurance policy). 1 Wheat. (U. S.) 227, *n.* (1); 3 Bosw. (N. Y.) 386.

AVERIA.—In old English law, this term was applied to working cattle, such as horses, oxen, &c.

AVERIIS CAPTIS IN WITHER-NAM.—A writ which, in England, issues against one who has unlawfully taken the cattle of another and driven them out of the county.

AVERMENT.—In pleading.—A statement of facts made positively, and not by way of argument or inference. Anciently the term was used to designate the conclusion of a pleading in which new affirmative matter is pleaded, where

the offer to verify is made. This is now called the "verification" (*q. v.*)

AVERMENT, (defined). Minor (Ala.) 420; 5 Johns. (N. Y.) 211, 220, 430.

—— (construction of, in statute relating to dower). 4 Hen. & M. (Va.) 23.

—— (distinguished from "colloquium," "innuendo"). 5 Johns. (N. Y.) 220, 430.

—— (in an indictment for libel). Cowp. 683.

—— (in pleading). 1 Saund. 117, *n.*, 235, *n.*; 2 *Id.* 61 *n.* (g); 1 Wils. 338.

AVERSIO.—An averting or turning away. A term used to designate a sale in gross or bulk.

AVERSIO PERICULI.—An averting or turning away of peril. A term applied to a contract of insurance.

AVERUM.—Goods, property, substance; a beast of burden.—*Spel. Gloss.*

AVET.—A term used in the Scotch law, signifying to abet or assist.

AVIA.—A grandmother.

AVIATICUS.—A grandson.

AVIZANDUM.—A term used in the Scotch practice, signifying advisement, deliberation.

AVOCATION, (in Sunday Act). 9 Ind. 112; 14 *Id.* 396.

AVOID.—To avoid a transaction is to make it void. A person is said to avoid a contract by setting up as a defence in a legal proceeding taken to enforce it, some defect which prevents it from being enforceable. Thus, if an action is brought against a person on a contract either void or voidable by him, he avoids it by setting up that defence: similarly if he brings an action to have a voidable contract, settlement, &c., declared void.

AVOIDANCE.—

§ 1. The operation of making a transaction void. Thus, a bond is said to be conditioned for avoidance when it contains a condition providing that it shall be void on a certain event. See **BOND**; **CONDITION**; **VOID**.

§ 2. In pleading.—Alleging new matter in answer to a pleading, as a reason why the matter therein pleaded should not have its ordinary legal effect.

§ 3. In English ecclesiastical law.—The vacancy in a benefice when there is no incumbent.

AVOIRDUPOIS.—The name of a system of weights (sixteen ounces to the pound) used in weighing articles other than medicines, metals, and precious stones.

AVOUCHER.—See **VOUCHER**.

AVOW.—To acknowledge the doing of an act and justify it. See **REPLEVIN**.

AVOWANT.—See **REPLEVIN**.

AVOWEE.—See **ADVOWEE**.

AVOWRY.—See **REPLEVIN**. As to the old law of avowries, see Co. Litt. 268a, 269a.

AVOWRY, (defined). 6 Hill (N. Y.) 284.

AVOWTERER.—According to the *Termes de la Ley*, an avowterer is an adulterer with whom a married woman continues in adultery. See **ADVOWTRY**.

AVULSION.—LATIN: *avellere*, to pluck or tear away.

A severance of a large portion of the soil from the estate of one person, and removal of it to the estate of another, by the immediate and perceptible action of a stream.

AVUNCULUS.—The brother of a mother

AVUNCULUS MAGNUS.—The brother of a grandmother.

AVUNCULUS MAJOR.—The brother of a great-grandmother.

AVUNCULUS MAXIMUS.—The brother of a great-great-grandmother.

AVUS.—A grandfather.

AWAIT.—A term used in old statutes, signifying a lying in wait, or waylaying.

AWARD.—OLD FRENCH: *eswardeir*, *esgardeir*, to examine into, adjudge. Skeat Etym. Dict. *s. v.*

§ 1. To award is to adjudge. Thus, a jury is sometimes said to award damages when it assesses the amount (see **VERDICT**), and a court awards an injunction when it grants an order for that purpose. See **INJUNCTION**.

§ 2. Of arbitrator.—Most commonly, however, award signifies the decision of an arbitrator or of commissioners. (See **ARBITRATION**.) No precise form of words is necessary, provided that the decision is expressed, that it follows the submission, and that it is certain and unambiguous:

otherwise the whole or part of it may be set aside by the court. It is signed by the persons making it, and is then deemed to be published so far as the authority of the arbitrator is concerned. The award is considered as published for all purposes when notice of its execution has been given to the parties.

§ 3. **Effect of.**—An award is conclusive and binding on the parties, unless set aside, or unless the matter is referred back to the arbitrator for re-consideration. An arbitrator may, however, give his award in the shape of a special case for the opinion of the court.

§ 4. **Enforcement of.**—When a submission to arbitration can be made a rule of court, the award may be enforced by execution like a judgment; when it cannot be made a rule of court, it may be enforced by action. The award on a compulsory reference has the same effect as the verdict of a jury, so that judgment may be signed on it. Archb. Pr. 1334 *et seq.*

AWARD, (defined). South. (N. J.) 833.

—— (how far a contract). 43 Ala. 521.

—— (of an umpire). 2 Watts (Pa.) 75.

—— (of arbitrators). 2 Halst. (N. J.) 391.

AWARD, (under parol submission) 23 Wend. (N. Y.) 363.

—— (when equivalent to a judgment). 5 Ala. 195; Morse Arb. 489.

AWARD FINAL, (what words will create). Coxe (N. J.) 255.

AWAY-GOING CROP.—One which has been sown or planted during a tenancy, but is not ready for gathering until after its expiration. Sometimes the outgoing tenant has the right to cut and take away the crop when it is ripe, either by agreement or custom; sometimes the incoming tenant is bound to buy the crop of him at a valuation. Woodf. L. & T. 714; 1 Sm. Lead. Cas. 598. See **EMBLEMENTS**.

AWM.—A term used in old English statutes, signifying a measure used in measuring Rhenish wines.

AYANT CAUSE.—A term of the French law, signifying an assignee. The term is used with that meaning in Louisiana.

AYLE.—See **AIEL**.

AYUNTAMIENTO.—A term used in Spanish-American law, to designate the governing body or council of a municipality.

B.

B, as the second letter of the alphabet is used to distinguish the second page of a book, the second subdivision of an alphabetical list or index, the second foot note on a printed page, &c., from the first and following ones which are marked a, c, d, etc. For its use as an abbreviation, see **TABLE OF ABBREVIATIONS**, *ante* p. v.

BACBEREND, or **BACKBEREND.**—An old English law term for a thief caught with the stolen goods in his possession (upon his back).—*Spel. Gloss.*; *Bract*. 150 b.

BACHELOR.—(1) The holder of an inferior degree conferred by a college or university, *e. g.* a bachelor of arts, bachelor of law, &c.; (2) a kind of inferior knight; an esquire; (3) a man who has never been married.

BACK-BOND.—In Scotch law, an instrument similar to the English declaration of trust.

BACK LANDS, (in a will). 22 Wend. (N. Y.) 148.

BACK-WATER.—(1) Water in a stream turned or kept back, or caused to re-flow by some obstruction, or dam lower down the stream; (2) water caused to flow backward from a steam vessel by reason of the action of its wheels or screw.

BACKADATION.—Money paid to postpone the delivery of stock when the price is lower for future than for present delivery.—*Wharton*.

BACKER, (in indorsement on note). 2 Hill (N. Y.) 80.

BACKING A WARRANT is where a magistrate indorses a warrant which has been issued by a magistrate of another district or jurisdiction, in order that it may be executed within the jurisdiction of the magistrate making the indorsement. Stone Just. 113.

BACKWARD AND FORWARD, (in marine insurance policy). 1 Taunt. 463.

BACON.—Francis Bacon was born on the 22d January, 1560-1, entered as a student at Gray's Inn about 1577, was called to the bar in 1582, entered parliament in 1584, was made a kind of queen's counsel under Elizabeth, and king's counsel under James I.; was created solicitor general in 1607, attorney general in 1613, privy councillor in 1616, lord keeper in March, 1616-17, and lord chancellor in January, 1617-18. In 1618 he was created Baron Verulam, and in 1620 Viscount St. Albans. In the following year he was accused of corruption in his office; and, on his confession, he was deprived of the Great Seal, fined and imprisoned. He was afterwards pardoned, but his health had begun to fail, and he died on the 9th of April, 1626. —*Foss Biog. Dict.* His principal legal works are the reading on the Statute of Uses, and some essays on law reform, but they are insignificant compared with his philosophical writings.

BACULUS.—A rod, staff, or wand, used in old English practice, in making livery of seisin where no building stood on the land (Bract. 40); a stick or wand, by the erection of which on the land involved in a real action, the defendant was summoned to put in his appearance; this was called *baculus nuntiatorius*. 3 Bl. Com. 379. See ANNULUS ET BACULUS.

BAD ARTICLES, (he makes, in slander). 4 Wend. (N. Y.) 537; 8 Wheel. Am. C. L. 115.

BAD WOMAN, (in declaration for slander). 127 Mass. 487, 490.

BADGE.—A mark, sign, or token; an attending circumstance indicative of the existence of some extrinsic fact, *e. g.* the possession of goods by the seller after the sale, is sometimes a "badge of fraud." The more frequent meaning of the word is, a distinctive mark or token worn by police officers, watchmen, corporate employés, and others, who are compelled to wear it by law, or the regulations of some superior.

BADGER.—FRENCH: *bagage*, a bundle, and thence is derived *bagagier*, a carrier of goods.

One that buys corn or victuals in one place, and carries them to another to sell and make profit by them. And such a one is exempted in the Stat. 5 and 6 Edw. VI. c. 14, from the punishment of an ingrosser within that statute. But by 5 Eliz. c. 12, badgers are to be licensed by the justices of the peace in the sessions; whose licences will be in force for one year, and no

longer, and the persons to whom granted must enter into a recognizance that they will not by color of their licences forestal, or do any thing contrary to the statutes made against forestallers, ingrossers and regrators. If any person shall act as a badger without licence, he is to forfeit £5, one moiety to the king, and the other to the prosecutor, leviable by warrant from justices of the peace, &c.—*Jacob*.

BADLY AND NEGLIGENTLY CONDUCTED HIMSELF, (in indictment). 1 Str. 2.

BAGGAGE.—Such apparel and personal effects, ornaments, &c., as a traveler carries for his own use or convenience upon a journey; luggage. As to what articles are or are not baggage, within the law relative to the liability of a carrier or innkeeper, see the cases referred to below.

BAGGAGE, (defined). 6 Blatchf. (U. S.) 61; *Id.* 538; 1 Newb. Adm. (U. S.) 494.

—(distinguished from "goods and merchandise"). 45 Barb. (N. Y.) 218.

—(in carrier's contract). 106 Mass. 146.

—(liability of carrier for). 10 Blatchf. (U. S.) 16; 13 Ill. 178; 56 Ill. 212; 6 Hill (N. Y.) 586; 3 Barb. (N. Y.) 388; 106 Mass. 146; 54 Mo. 385; 98 Mass. 371; 1 Pick. (Mass.) 50; 4 Bosw. (N. Y.) 225; 1 Hilt. (N. Y.) 499; 10 How. (N. Y.) Pr. 330; 10 Cush. (Mass.) 506; 4 E. D. Smith (N. Y.) 178; *Id.* 453; 14 Pa. St. 129; 13 Wend. (N. Y.) 611; 19 *Id.* 534; 25 *Id.* 459; 26 *Id.* 591; 2 Wheel. Am. C. L. 553; 5 East 428.

—(for which innkeeper is liable). 11 Md. 434; 13 *Id.* 126; 33 Ind. 379; 12 How. (N. Y.) Pr. 151.

—(property intended for sale, not). 56 Ill. 293; 10 Cush. (Mass.) 506; 2 Bosw. (N. Y.) 589.

—(when money is). 30 N. Y. 594; 1 E. D. Smith (N. Y.) 95.

—(money in trunk not considered as). 9 Wend. (N. Y.) 85, 117.

—(when watch or jewelry is). 4 E. D. Smith 181; 4 Bosw. (N. Y.) 225; 118 Mass. 275; 5 Blatchf. (U. S.) 538.

—(in a common carrier's notice). 4 Harr. & J. (Md.) 317; 54 Mo. 385.

BAGGAGE AT RISK OF OWNERS, (in an advertisement). 1 Pick. (Mass.) 50.

BAGGAGE OF PASSENGERS AT THE RISK OF THE OWNERS, (in notice by carrier). 19 Wend. (N. Y.) 234, 251; 21 *Id.* 153, 354; 10 Ohio 145; 5 Rawle (Pa.) 188; 2 Wheel. Am. C. L. 544.

BAIL is security that a person or thing concerned in a civil or criminal proceeding will obey, or be dealt with in accordance with the requirements of the court. Bail also signifies the sureties who form the security.

§ 1. **Common bail.**—At common law, bail played an important part in every

action. The ordinary mode of commencing an action was by serving the defendant with a *capias* and notice to appear (*see CAPIAS AD RESPONDENDUM*), and thereupon the defendant appeared and put in sureties for his future attendance and obedience, which sureties were called "common bail," "being the same two imaginary persons that were pledges for the plaintiff's prosecution, John Doe and Richard Roe," but this was abolished by Stats. 2 Will. IV. c. 39, and 1 and 2 Vict. c. 110.

§ 2. **Bail below, or to the sheriff.**—In certain cases the plaintiff might, by making an affidavit as to the amount of the cause of action (called an "affidavit to hold to bail"), arrest the defendant and make him put in substantial sureties for his appearance, who were called "bail below" or "bail to the sheriff," because they and the defendant entered into a bond (called the "bail bond") in favor of the sheriff, to secure the debt sued for, and conditioned for the appearance of the defendant and the putting in of special bail in due course. If the defendant did not comply with the condition the plaintiff might take an assignment of the bail bond from the sheriff and enforce it against the sureties, or compel the sheriff either to render the defendant (technically called "bringing in the body") or to put in special bail for him. This kind of bail is still required in bailable actions, in States proceeding according to the course of the common law.

§ 3. **Special bail.**—Special bail (bail above or bail to the action) were persons who undertook that if the defendant were condemned in the action he should pay the debt or render himself to prison. The operation of procuring special bail was called "putting in bail," and was effected by leaving a memorandum called the "bail

piece" with the proper officer, and by the bail entering into a recognizance binding themselves as sureties for the defendant. Bail was put in **absolutely** if the plaintiff consented to the bail, or **de bene esse** if they were subject to his afterwards excepting to them; in the latter case the bail, after entering into the recognizance, made affidavits of justification, and if the plaintiff excepted to them they had to justify (*see JUSTIFICATION*), or the defendant might add (*i. e.* substitute) other bail, who had to justify instead of the original bail; in either case, if the justification was successful a rule of allowance was drawn up, when the bail was said to be perfected. (Chit. Pr. 727; Sm. Ac. (II.) 233.) The practice of giving bail below and bail above in ordinary actions was abolished in England by the Debtor's Act, 1869, § 6, doing away with arrest on mesne process; but the practice remains as respects a certain class of actions, in the States which have not adopted Codes of Procedure.*

§ 4. **Bail in error.**—Another kind of bail is bail in error, given by a defendant in an action when he is going to bring error on the judgment and wishes execution to be stayed in the meantime. The practice is similar to that of putting in special bail (*supra*, § 3.) (Sm. Ac. (II.) 232.) *See SECURITY.*

§ 5. **In admiralty actions.**—Where a ship, cargo, or other property has been arrested, the defendant may have it released on giving bail for its value. The bail consists of two sureties, who execute a bond called a "bail-bond." Wms. & B. Adm. Pr. 210 *et seq.* *See APPRAISEMENT; RELEASE.*

§ 6. **In criminal proceedings.**—Where a person is accused before a magistrate of an indictable offence, and there is suffi-

*In England, in ordinary actions bail in the old sense has been abolished, but a somewhat analogous proceeding still exists under § 6 of the Debtor's Act, 1869, which prevents a defendant from leaving England unless he gives security, if his evidence is necessary to the plaintiff (Coe Pr. 165); and under Order XIV. of the Rules of Court, which enables a plaintiff, where the defendant has no defence, to sign judgment unless security is given. Bail may still be required to be given by the defendant in certain actions for the recovery of land, and in cases where a cause in which the cause of action does not amount to £20, is removed from an inferior

court to the High Court, either before judgment or after judgment, by writ of error. Bail generally consists of a bond or recognizance by the party, and two sureties. (Stat. 19 Geo. III. c. 70; Arch. Pr. 875, 1406, 1423.) In a proceeding by foreign attachment, giving bail is one of the modes by which the defendant may dissolve the attachment; bail are also required to enable him to appear by means of a *scire facias ad disprobandum debitum*; the bail must in either case be special bail, *i. e.* bail to render the defendant or pay what shall be recovered against him if the plaintiff recover judgment. Brand. For. Att. 106.

cient evidence to put him on his trial, the magistrate *may*, in all cases except treason (and in some jurisdictions capital cases), admit the accused to bail instead of committing him to prison; in the case of a person charged with a misdemeanor the magistrate is generally bound to admit him to bail. In some States the court has authority to admit to bail for any crime whatever. Bail consists of a recognizance entered into by the accused and one or more sureties for the payment of a sum of money if the accused fails to surrender himself for trial or departs the court without leave. If the sureties have reason to suppose that he is about to escape, they may seize him and have him committed to prison, whereby they are discharged. Arch. Cr. Pl. 87; 4 Steph. Com. 355.

§ 7. In French law, the word "bail" is used in several contracts of hiring, as to which see LOUAGE. In Canadian law, also, "bail" signifies a lease, thus *bail emphyteotique*, a lease for years, with a right of indefinite renewal.

BAIL BOND.—An obligation under seal given to the sheriff by the defendant and one or more persons as sureties, conditioned that the defendant shall appear in the action and answer to the mesne process served therein, and by which the sheriff is ordered to arrest him. It cannot be taken on final process, in which respect it differs from a recognizance (*q. v.*) It must be sealed, conditioned in double the amount endorsed on the writ (or in the amount specified in the order or warrant of arrest), must run to the sheriff by his official designation, must call for defendant's appearance at the particular time and place named in the writ, and must so describe the action in which it is given as to identify it from any other suit which may be pending between the same parties.

BAIL BOND, (defined). 2 Green (N. J.) 76.

BAIL COURT.—An auxiliary court of the Court of Queen's Bench, at Westminster, wherein points connected more particularly with pleading and practice are argued and determined.

BAIL, HOLDING TO, (in a statute). 7 Mass. 283.

BAIL IN ERROR, (justification of). 10 Wend. (N. Y.) 618.

BAIL PIECE.—In practice, A formal entry or memorandum of the recognizance

or undertaking of special bail in civil actions, which, after being signed and acknowledged by the bail before the proper officer, is filed in the court in which the action is pending. (3 Bl. Com. 291; 1 Tidd Pr. 250.)—*Burrill*.

BAIL TO THE ACTION, (in a statute). 15 Serg. & R. (Pa.) 178.

BAILABLE.—A writ or process is said to be bailable when a person arrested under it may be liberated on bail, either as a matter of right, or in the discretion of the court. So, a bailable action is one in which bail may be required, and a bailable offence is one in a prosecution for which the alleged offender may be held to bail. See BAIL; RECOGNIZANCE.

BAILEE—BAILMENT—BAILOR.—OLD FRENCH: *bail, baillir*, from Latin *bajulus*, originally = porter, in Low Latin = a manager or bailiff. Diez 46; Littré s. v.

§ 1. In general.—Bailment is a contract by which goods are delivered by one person (the bailor) to another person (the bailee) for a certain purpose, upon an express or implied promise by the bailee to return them to the bailor, or to deliver them to some one designated by him, after the purpose has been fulfilled. The bailee is bound to take a certain amount of care of the goods while in his possession, and the amount of care may be expressly fixed by the contract. Where there is no express agreement as to this, one of the following rules, founded on the presumable intention of the parties, is applied: (1) Where the bailment is for the benefit of the bailor alone, the bailee is liable only for gross negligence; (2) where it is for the benefit of the bailee alone, he is bound to use the very strictest diligence; (3) where it is for the benefit of both bailor and bailee, the bailee is only bound to use ordinary and average diligence.

§ 2. The different kinds.—Bailments are of six kinds: the classification being of importance from the different nature of the bailee's liability in each case: "The first sort of bailment is, a bare naked bailment of goods, delivered by one man to another to keep for the use of the bailor; and this is called a **depositum**. . . . The second sort is, when goods or chattels that

are useful are lent to a friend gratis, to be used by him; and this is called **commodatum**, because the thing is to be restored in specie. The third sort is, when goods are left with the bailee to be used by him for hire; this is called **locatio et conductio**, and the lender is called "locator" and the borrower "conductor." The fourth sort is, when goods or chattels are delivered to another as a pawn, to be security to him for money borrowed of him by the bailor; and this is called in Latin **vadum**, and in English a "pawn or pledge." The fifth sort is, when goods or chattels are delivered to be carried, or something is to be done about them for a reward to be paid by the person who delivers them to the bailee who is to do the thing about them [sometimes called **locatio operis faciendi**]. The sixth sort is, when there is a delivery of goods or chattels to somebody who is to carry them or do something about them gratis; without any reward for such his work or carriage, and this is called **mandatum**." (*Per Holt, J., in Coggs v. Bernard, Ld. Raym. 909; 1 Sm. Lead. Cas. 188; Chit. Cont. 428 et seq.* The Latin terms are taken from the *Corpus Juris*, especially 3 Inst. 14, 24, 26.) The general rule is, that in the first case the bailee is only answerable for gross negligence, that in the second case he is bound to use the strictest care and diligence, that in the third and fourth cases he is only bound to use ordinary care, and so in the fifth case, unless he is a common carrier (*q. v.*), and that in the sixth case the bailee is only answerable for gross negligence. See notes to *Coggs v. Bernard*, 1 Sm. Lead. Cas. 207, where also Sir William Jones' criticisms on Lord Holt's classification are shown to be unfounded. See FACTOR; NEGLIGENCE; PLEDGE.

BAILEE WITHOUT HIRE, (liability of). 11 Wend. (N. Y.) 25.

BAILIE.—In the Scotch law, a bailie is (1) a magistrate having inferior criminal jurisdiction, similar to that of an alderman (*q. v.*) (2) An officer appointed to confer infeoffment (*q. v.*); a bailiff (*q. v.*); a server of writs.—*Bell Dict.*

BAILIFF.—

§ 1. Of hundred.—An officer of the English law, concerned in the administration of

justice in a certain district. (Co. Litt. 168 b.) Persons having the franchise of executing legal process within a liberty or other district appoint their own bailiffs for that purpose (2 Steph. Com. 630), but usually bailiff signifies a sheriff's officer, being either a bailiff of a hundred, appointed over a hundred for the routine part of the sheriff's office, or a bailiff employed by the sheriff to serve writs and make arrests and executions. The sheriff being responsible for their acts, the latter class of bailiffs are annually bound to him in a bond with sureties for the due execution of their office, and thence are called "bound bailiffs,"—"which the common people have corrupted into a much more homely appellation." 1 Bl. Com. 345.

§ 2. A **special bailiff** is a particular person appointed by the sheriff to execute a writ at the request of the person suing it out. The sheriff is not liable to that person for the acts of his special bailiff. Arch. Pr. 22.

§ 3. **Private**.—Bailiff also sometimes denotes "a servant that hath administration and charge of lands, goods and chattels, to make the best benefit for the owner." (Co. Litt. 172 a.) For the etymology of bailiff, see BAILIWICK.

§ 4. In America, the officer corresponding to a bailiff, is generally called a "deputy sheriff."

BAILIWICK.—NORMAN-FRENCH: *baillie* (Britt. 7 b; William I.'s Laws, i. 2, § 1), from *bail*, a manager, official, from Latin, *bajulus*, the bearer of a burden. (Diez. Etym. Wortb. i. 46.) The last syllable is said to be Middle-English, *wick*, a village. Skeat. Etym. Dict.

The district in which an officer concerned in the administration of justice has authority. (Co. Litt. 168 b.) The term was formerly applied to coroners and similar officers (Britt. 7 b), but at the present day it is only used to denote the county in which a sheriff has authority, or a liberty exempt from the sheriff. See BAILIFF.

BAILLEW DE FONDS.—In Canadian law, the vendor of land, the purchase price of which has not been paid.

BAILLI.—In old French law, one to whom judicial authority was assigned or delivered by a superior.—*Burrill*

BAILMENT.—See BAILEE.

BAILMENT, (defined). 56 Ala. 166.
— (distinguished from "sale"). 3 Hun. (N. Y.) 550; 4 N. Y. 76; 6 Thomp. & C. (N. Y.) 29.

BAILOR.—See BAILEE.

BAIR-MAN.—In Scotch law, a *dyvour*, or bankrupt; an insolvent debtor of the poorer sort.

BAIRN'S PART.—In the Scotch law, the children's portion of the father's estate; a third of his free movables after deducting his debts, if he leaves a widow, otherwise one-half.

BAITING ANIMALS.—See CRUELTY TO ANIMALS.

BAITING, (in a statute). L. R. 9 Q. B. 380.

BALÆNA.—In old English law, a large ("royal") fish, the head of which belonged to the king and the tail to the queen, whenever one was caught. According to Blackstone, a whale. 1 Bl. Com. 221.

BALANCE.—An amount remaining due from one person to another with whom he has had dealings; the amount of difference between the debit and credit sides of an account.

BALANCE, (bequest of). 2 Jac. & W. 248.
 — (in N. J. Justice Court Act). 3 Halst. (N. J.) 217.

— (of an account). 45 Mo. 573.
 — (of a tract of land). 3 A. K. Marsh. (Ky.) 19; 5 Wheel. Am. C. L. 14.

BALANCE DUE ON GENERAL ACCOUNT, (in commercial usage). 3 Pet. (U. S.) 430.

BALANCE DUE ON SETTLEMENT, (in a plea of set-off). 4 Halst. (N. J.) 270.

BALANCE OF ACCOUNT, (in affidavit to hold to bail). 2 Chit. 15.

BALANCE OF PROBABILITIES, (in a charge to a jury). 9 Gray (Mass.) 393.

BALANCE ORDER.—In England, when an order for a call is made in the compulsory winding up of a company, a copy of it is served on each of the contributories, together with a notice specifying the balance due from him in respect of the call. If default is made by any contributory in payment of the sum, another and special order, called a "balance order," is made, requiring him to pay what is due from him within four days after service. Lind. Part. 1391; Rules under Companies Act, r. 35.

BALANCE SHEET.—A statement made by merchants and others to show the true state of a particular business. A balance sheet should exhibit all the balances of debits and credits, also the value of merchandise, and the result of the whole.—*Bouvier*.

BALDIO.—In Spanish law, waste land, which has no known owner, or has been abandoned; land unfit for the plow or for pasture.

BALES, (cotton in). 2 Car. & P. 525.

BALIUS.—A tutor, guardian, or teacher of young persons.—*Spel. Gloss.*

BALIVA-BALIVATUS-BALIVIA.
 —In old English law, a bailiwick (*q. v.*)

BALIVO AMOVENDO.—For the removal of the bailiff. An old writ to remove a bailiff from his office.

BALLASTAGE.—A toll paid for the privilege of taking up ballast from the bottom of the port.—*Bouvier*.

BALLOT.—A written or printed slip of paper containing the names of the candidates and of the offices for which they are respectively nominated, deposited by the voter in a box called the "ballot-box," at a public election, to signify his choice as between the rival candidates.

Under the Stat. 35 and 36 Vict. c. 33, all parliamentary and municipal elections are required to be made by ballot; and under the Elementary Education Act, 1870 (33 and 34 Vict. c. 76), the elections are similarly required to be by the ballot. This mode of voting was one of the points advanced by the so-called Chartists, in 1839, as the People's Charter; the other points being universal suffrage, annual parliaments, and the abolition of the property qualifications for members of parliament.

BALLOT, (defined). 38 Ind. 89; 7 Me. 414.

— (in a State constitution). 38 Ind. 89.

BALNEARI.—In the Roman law, those who stole the clothes of bathers in the public baths. 4 Bl. Com. 239.

BALTIC, (what included in). 3 Campb. 16.

BALUSTRAD, (in a statute). 128 Mass. 330.

BAN.—In old law, (1) an announcement, edict, notice or proclamation *e. g.* the announcement of a forthcoming marriage; an edict or proclamation of excommunication, interdiction, or proscription; a curse publicly pronounced.—*Blount; Cowell; Tomlins.* (2) A military banner, flag or standard; a force of soldiers summoned to the standard; a summons.—*Spel. Gloss.* (3) A privileged territory around a town or village.

BANALITY.—In Canadian law, the right of a lord to compel his tenants to grind their corn, or bake their bread, at his mill or oven; also the territory within which this right existed. See 1 Low. C. 31; 3 Id. 1.

BANC.—Bench, or court. Sittings in banc were those sittings which the English superior courts of common law held for the purpose of hearing and deciding questions of law, *e. g.* on demurrers, motions for new trials, &c., as opposed to sittings at the assizes or at Nisi Prius, and to trials at bar (*see* those titles). Since the Judicature Act, sittings for deciding questions of law are properly called "sittings of divisional courts," but the term "in banc" is still sometimes used to signify the meeting of a quorum of the full court. See BANK.

BANCI NARRATORES.—In old English law, counters of the bench; advocates or pleaders in the Court of Common Pleas. 1 Bl. Com. 24.

BANCUS.—A bench; a high seat; the seat of justice. The English Court of Common Pleas was in former times called *Bancus*.

BANCUS REGIS.—The King's Bench; the highest court in England after the parliament. So called because in contemplation of law its proceedings were held *coram ipso rege*, before the king himself. See COURTS; KING'S BENCH.

BAND.—In old Scotch law, a proclamation calling out a military force.—*Burrill*.

BANDIT.—A person under a ban; an outlaw; a brigand. *Banditti*, a band of robbers.

BANE.—A malefactor; a denunciation of an evil-doer. (Bract. 116.)—*Blount*; *Cowell*.

BANISHMENT.—A punishment by forced exile, either for years or for life; inflicted principally upon political offenders, "transportation" being the word used to express a similar punishment of ordinary criminals. Banishment, however, merely forbids the return of the person banished before the expiration of the sentence, while transportation involves the idea of deprivation of liberty after the convict arrives at the place to which he has been carried. See PENAL SERVITUDE.

BANK.—*LATIN*: *bancus*, a bench.

§ 1. In the sense of court.—The bench of justice. The sitting of the full court for the consideration of questions of law, as distinguished from sittings at *Nisi Prius*, for the trial of questions of fact. See BANC; BANCUS.

§ 2. In commercial law.—(1) A place of deposit for money; (2) an association or corporation whose business it is to receive money on deposit, cash checks or drafts, discount commercial paper, make loans, and issue promissory notes payable to bearer, called "bank notes;" (3) the building, apartment or office where such business is transacted. Banks are of three kinds, **banks of deposit**, which include savings banks (*q. v.*) and all others which receive money on deposit; **banks of discount**, being those which loan money on collateral or by means of discounts of commercial paper; and **banks of circu-**

lation, which issue bank notes payable to bearer. But the same bank, generally, performs all these several operations.

§ 3. **Bank of England.**—In England, of banks of circulation, the Bank of England is the most important, while it also has numerous public functions, such as paying the interest on and registering transfers of the public funds, circulating exchequer bills, making advances to the government, keeping accounts with the paymaster-general, &c. Grant Bank; 3 Steph. Com. 221 *et seq.*; in addition to the statutes there referred to, see the Companies Act, 1879; the Bankers Books Evidence Acts, 1876 and 1879.

BANK, (defined). 14 Bankr. Reg. 92; 73 Ind. 377; 106 Mass. 75.

— (synonymous with "shore"). 20 Wend. (N. Y.) 152.

— (in a statute). 16 How. (U. S.) 416; 10 Bush (Ky.) 152.

— (in act concerning State banks). Penn. (N. J.) 1057.

— (in U. S. internal revenue act). 17 Wall. (U. S.) 109.

— (what moneyed corporation is not). 52 Cal. 196.

BANK ACCOUNT.—A sum of money deposited in the common fund of a bank, subject to be drawn out by the check of the depositor; also the statement, on the books of the bank, and on the depositor's bank book, of the amounts deposited and drawn out by check from time to time.

BANK AND BANKING INSTITUTION, (in legislation). 16 How. (U. S.) 416, 438

BANK, ANY (in U. S. bankruptcy act of 1874). 14 Bankr. Reg. 92.

BANK, ANY IN BOSTON, (in a promissory note) 108 Mass. 510, 513.

BANK BILL.—See BANK NOTE.

BANK BILLS, (defined). 3 Scam. (Ill.) 326.

— (synonymous with "bank notes"). 21 Ind. 176; 2 Park. (N. Y.) Cr. 37; 17 Vt. 151.

— (treated as money). 12 Johns. (N. Y.) 220, 395; 4 Cow. (N. Y.) 422; 5 *Id.* 187; 2 Wend. (N. Y.) 339.

— (in an indictment). 8 Gray (Mass.) 496; 7 Allen (Mass.) 538.

— (liability of carrier as to). 6 Wend. (N. Y.) 346, 355, 363.

— (of insolvent bank, payment in). 13 Wend. (N. Y.) 100.

— (in a statute). 21 Ind. 176.

BANK MONEY, (defined). 5 Humph. (Tenn.) 140.

BANK NOTE.—A promissory note made by a bank or authorized banker, payable to bearer on demand, and intended to circulate as money. Bank notes are generally treated as cash, and there-

fore can rarely be followed or identified. Bank notes are a legal tender unless objected to, and greenbacks and national currency notes, are good legal tender in all cases, except when offered in payment of customs duties or interest on the public debt. In case a bank note is lost or is stolen, or otherwise improperly obtained, the bank, upon presentment by a *bona fide* holder, is bound to cash it, although to the prejudice of the true owner. 1 Sm. Lead. Cas. 468.

BANK NOTE, (considered as money). 3 Wend. (N. Y.) 21; 2 Wheel. Am. C. L. 176; Amb. 68; 1 Burr. 457; Gow 121; 3 T. R. 554.

—— (in an indictment). 1 Mass. 336; 8 Id. 64; 2 Pick. (Mass.) 49.

—— (in a criminal statute). 1 Nott & M. (S. C.) 9, 91.

—— (larceny of, under a statute). 3 Binn. (Pa.) 535.

BANK NOTES, (defined). 17 Mass. 1.
—— (synonymous with "bank bills"). 2 Park. (N. Y.) Cr. 27.

—— (in a contract). 1 Hamm. (Ohio) 178; 1 Halst. (N. J.) 144, 222.

—— (in a declaration). 6 Har. & J. (Md.) 53.

—— (in a promissory note). 1 Hamm. (Ohio) 524; 30 Tex. 37, 49.

—— (treated as money). 10 Wheat. (U. S.) 347; 3 Atk. 226, 232; 13 East 20.

—— (not "money" or "goods and chattels"). 2 Cranch (U. S.) C. C. 133.

—— (note payable in). 19 Johns. (N. Y.) 145.

—— (of broken bank, payment in). 11 Wend. (N. Y.) 9.

—— (the subject of larceny under a statute). 1 Binn. (Pa.) 201.

—— (what are not). 23 Ind. 451.

BANK OF A RIVER, (in a contract). 19 Wall. (U. S.) 264.

—— (in a deed). 6 Conn. 369; 8 Me. 85.

BANK OF A STREAM, (defined). 57 Me. 273.

BANK OFFICERS, (duties of). 6 Paige (N. Y.) 497; 14 Serg. & R. (Pa.) 420.

—— (liability of). 3 Paige (N. Y.) 222.

—— (powers of). 12 Serg. & R. (Pa.) 256.

BANKABLE.—(1) Securities and evidences of debt which banks will receive as cash; (2) commercial paper deemed worthy of discount by the bank to which it is offered to that end.

BANKER.—A person who receives the money of his customers on deposit, and pays it out again in a manner agreed on between them, *e. g.* by cashing checks or drafts (*q. v.*) drawn on him by the customer. In the meantime he employs the money by lending it at interest, discounting bills, &c. The relation between banker

and customer is generally that of debtor and creditor, not of trustee and *cestui que trust*, or of principal and agent.

BANKER, (defined). 43 Ill. 183; 15 N. Y. 9, 167.

—— (acting as). 1 Atk. 218.

—— (in U. S. internal revenue act). 1 Otto (U. S.) 704.

BANKERS, BROKERS AND FACTORS, (in a statute, include "scrivener"). 1 Atk. 143, 169.

BANKER'S NOTE.—A promissory note, identical with a bank note (*q. v.*) except that it is issued by a private banker or unincorporated banking institution.

BANKING, (defined). 3 Ohio St. 1, 3.

—— (right of, defined). 15 Johns. (N. Y.) 358, 390; 2 Johns. (N. Y.) Ch. 371, 377.

BANKING BUSINESS, (defined). 3 Wall. (U. S.) 495; 13 Pet. (U. S.) 530.

BANKING INSTITUTIONS, (in a statute of Ohio). 16 How. (U. S.) 438.

BANKING POWERS, (defined). 2 Cow. (N. Y.) 678; 9 Wend. (N. Y.) 351, 383.

—— (as to loans and discounts). 20 Johns. (N. Y.) 380.

—— (of banking company incorporated by foreign State). 7 Wend. (N. Y.) 276.

—— (of corporation). 1 Cow. (N. Y.) 514; 2 Id. 664, 678, 701; 9 Wend. (N. Y.) 352, 383; 3 Wheel. Am. C. L. 496; 3 Barn. & Ald. 1; 5 Taunt. 792.

—— (of insurance company). 4 Johns. (N. Y.) Ch. 329; 8 Cow. (N. Y.) 20, 709; 1 Hall (N. Y.) 555, 556; 3 Wend. (N. Y.) 98, 303, 485; 4 Id. 654; 7 Id. 31.

BANKING PRINCIPLE, (in a bank charter). 9 Mass. 54.

BANKING TRANSACTION, (under restraining act). 2 Hall (N. Y.) 515.

BANKRUPT.—(1) A broken-up or ruined trader; one who has committed an act of bankruptcy (*q. v.*); (2) a person who has been adjudicated a bankrupt by a court of bankruptcy. Such an adjudication is pronounced when it is proved to the satisfaction of the court, either that the person is unable to pay all his debts in full, or that his behavior is such as to raise a presumption that he intends to defeat the rights of his creditors. As to the derivation of the word, *see* BANKRUPTCY.

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the bankrupt is protected from proceedings against him by his creditors during the bankruptcy.*

BANKRUPT, (in resolution of stockholders of company). 41 Conn. 502.

— (of a drover, in slander). 2 Day (Conn.) 495.

— (of a merchant, in slander). 1 Mau. & Sel. 287.

BANKRUPT LAWS.—See **BANKRUPTCY**, § 3.

BANKRUPT LAW, (defined). 12 Wheat. (U. S.) 263.

— (distinguished from "insolvent law"). 37 Cal. 203, 222.

— (statute in nature of). 23 Wend. (N. Y.) 87.

BANKRUPTCY.—Bankruptcy is derived from the Italian *banca rotta*, from the popular mediæval practice of breaking the benches or counters of merchants who failed to pay their debts. Voltaire Dict. Phil. *voc. sig.* Banqueroute; Saint Bonnet Dict. *voc. sig.* Banqueroute, Faillite.

Originally, the bankruptcy law was a branch of criminal law, being directed solely to the object of preventing fraudulent traders from escaping from their creditors. (Robs. Bankr. c. 1; 2 Bl. Com. 471.) But by the statutes passed in Queen Anne's reign provision was made for relieving bankrupts from their debts, and by the Bankruptcy Act, 1861, the distinction between traders and non-traders, who had hitherto not been subject to the bankruptcy law, was to that extent abolished. The distinction between bankruptcy and insolvency still exists on the continent. Holtz. Encyc. *voc. sig.* Bankerott.

§ 1. **General principles.**—The name given to a variety of judicial or quasi-judicial proceedings, having for their main object the distribution of the prop-

erty of an insolvent person, firm or corporation, among his or its creditors. In England, however, the process of administering the property of an insolvent corporation or company is now called "winding-up" or "liquidation" (*q. v.*) The law of bankruptcy is founded on the principle, that when a man becomes insolvent, the property then remaining to him rightfully belongs to his creditors, and ought to be distributed ratably among them towards satisfaction of their claims, the debtor himself being released from future liability in respect of his debts, upon giving all the aid in his power towards the realization and distribution of his estate for the benefit of his creditors, and fulfilling the other conditions prescribed by the law for his discharge. (Robs. Bankr. 1.) This is effected in two manners—either by bankruptcy in the strict sense of the word (*infra*, § 2), or by arrangements or compositions between the insolvent and his creditors, which form part of the law of bankruptcy, in the wide sense of the word (*Megrath v. Gray*, L. R. 9 C. P. 216), and are generally carried out under the supervision of the Bankruptcy Court. See **ARRANGEMENT**; **COMPOSITION**; **LIQUIDATION**.

§ 2. **Strict meaning.**—In the strict sense, bankruptcy denotes proceedings taken to make a person, firm or corporation bankrupt, and to administer his or its property for the benefit of creditors. Under the American system (*infra*, § 3) these proceedings were of two kinds, (1) "voluntary bankruptcy," where the debtor himself petitioned the court to be declared a bankrupt; and (2) "involuntary bankruptcy," where one or more creditors

*Under the English law, if the bankrupt's estate is sufficient to pay his creditors a dividend of ten shillings in the pound, or if within three years after the close of the bankruptcy he pays to his creditors a sum making with the dividends paid in the bankruptcy the sum of ten shillings in the pound, he will be entitled to an order of discharge; in certain cases he may obtain his discharge without having fulfilled this requirement. (Robs. Bankr. 551.) An order of discharge releases the bankrupt from all debts proveable under the bankruptcy, with a few exceptions, and all property acquired by him after his discharge vests in him and not in his trustee. (*Ebbs v. Boulnois*, 10 Ch. App. 479; *Ex parte Hemming*, 13 Ch. D. 163.) Where the bankrupt has not obtained his discharge, he is protected from his creditors for the period of

three years from the close of the bankruptcy, but if at the end of that time he has not obtained his discharge, then any balance remaining unpaid in respect of any debt proved in the bankruptcy revives in the form of a judgment debt, and may be enforced against the property of the debtor in such manner as the court in which the bankruptcy took place, may direct. For this purpose the creditor desiring to enforce his claim files a statement verified by affidavit, showing that there is a balance of his debt remaining unpaid, and that the property against which payment is to be enforced is the property of the debtor; notice is served on the debtor, and the application is then heard. (Robs. Bankr. 554.) As to a second adjudication of bankruptcy against an undischarged bankrupt, see *Ex parte Watson*, 12 Ch. D. 380.

made the petition, founding it upon one or more alleged acts of bankruptcy, such as are recited in § 3, *infra*.

§ 3. **Bankrupt laws.**—There have been three general bankrupt laws in force in the United States at different periods, viz.: the act of Congress of 1800; that of 1841, and that of March 2d, 1867, amended by act of June 22d, 1874, and since repealed. Under the act of 1867, and the amendment above recited, the following were the grounds upon which a person, firm or corporation could be proceeded against at the instance of his or its creditors: (1) departure from the State of the bankrupt's residence with intent to defraud creditors; (2) remaining absent from the State with such intent; (3) concealment to avoid service of process; (4) concealment or removal of property to prevent its being attached, &c.; (5) making an assignment or other transfer of property with intent to delay, defraud or hinder creditors; (6) arrest in a civil action for \$100 or more, the claim being one provable in bankruptcy and the process of arrest remaining in force for twenty days or longer; or imprisonment for more than twenty days in a civil action on contract for \$100 or more; (7) gifts, payments or other transfers of money or property, or the confession of a judgment, or procuration by the debtor of the taking of his property on legal process for the purpose of giving a preference to certain creditors, &c., or with intent to defeat or delay the operation of the bankrupt law; (8) fraudulent stoppage of payment of commercial paper, or continued suspension of payment of such paper for a period of forty days, by a bank, banker, broker, manufacturer, merchant, miner or trader; (9) failure for forty days, by a bank or banker to pay a deposit lawfully demanded.

§ 4. **Petition for adjudication.**—In England, a bankruptcy generally consists of the following steps: The filing by a creditor in the appropriate court of a petition, stating that the debtor is indebted to him in the sum of £50 at least, that he has committed an act of bankruptcy, and praying that he may be adjudicated a bankrupt. (Bankr. Act, 1869, § 6. When the act of bankruptcy consists of non-compliance with a debtor's summons the issue of the debtor's summons may be considered as the first step in the bankruptcy.) The petition is accompanied by an affidavit verifying the statements contained in it. (*Id.* § 80.) A time is then appointed by the registrar of the court for the

hearing of the petition (Bankr. Rules (1870), 34) and a sealed copy of the petition, indorsed with notice of the time appointed for the hearing, is served on the debtor. (*Id.* 60.) If the debtor intends to oppose or show cause against the petition, he gives notice accordingly. Bankr. Rules (1870), 36.

§ 5. **Hearing of petition.**—At the hearing, either the petition is dismissed (Bankr. Act, 1869, § 8, as where the petitioning creditor fails to prove the statements in the petition), or the proceedings are stayed (as where the debtor gives security for the payment of the alleged debt, and the creditor is left to establish it by proceedings in the ordinary courts), (*Id.* § 9) or the debtor is adjudicated bankrupt.

§ 6. **Adjudication.**—On the debtor being adjudicated bankrupt, all his property vests in the registrar of the court (*Id.* § 17), and all rights against him (except those arising from torts, &c.,) must be enforced in the bankruptcy (*Id.* § 12), and therefore no creditor can bring an action against him. But every creditor, before he can take part in the proceedings or receive a dividend, must prove his debt by making an affidavit in a particular form. Bankr. Rules (1870) 67. *See* PROOF.

§ 7. **First meeting.**—As soon as may be after the adjudication, a meeting of the creditors who have proved their debts is held, for the purpose of appointing a trustee and a committee of inspection; this is called the "first meeting." Bankr. Act, 1869, §§ 14, 16.

§ 8. **Trustee.**—On the appointment of the trustee being ratified by the court, the property of the bankrupt passes from the registrar and vests in the trustee without any transfer (*Id.* § 17); his duty is to discover, take possession of, manage, realize and distribute the property among the creditors, subject to the directions of the committee of inspection, the creditors and the court. *Id.* § 20.

§ 9 **Close of bankruptcy.**—When the property has been realized and distributed, an order is made that the bankruptcy has closed. (*Id.* § 47.) No further proceedings (except for granting the bankrupt his discharge, and for enforcing the rights of the creditors against the bankrupt if he has not obtained his discharge,) (*In re Pettit's Estate*, 1 Ch. D. 478; *In re Westby*, 10 Ch. D. 776, in both which cases the question arose with reference to property acquired by the bankrupt after the close of the bankruptcy,) can then be taken in it, and the trustee in proper cases obtains his release. Bankr. Act, § 51.

§ 10. **Classification.**—Bankruptcy is usually classed under modes of acquisition (2 Bl. Com. 471 *et seq.*); but the acquisition of the property by the trustee is merely incidental to the main object of the bankruptcy, which is the administration of the property.

See BANKRUPT; BANKRUPTCY COURTS; CERTIFICATE; CLAIM; CREDITOR; DEBTOR; INSOLVENCY; MUTUAL CREDITS; PROTECTED TRANSACTIONS; REPUTED OWNERSHIP; TRADER.

BANKRUPTCY, (defined). Crabbe (U. S.) 456, 465; 5 Hill (N. Y.) 327.

— (distinguished from "insolvency") 2 Ben. (U. S.) 196; 4 Wheat. (U. S.) 122; 37 Cal. 208, 222.

BANKRUPTCY, (act of). 4 Day (Conn.) 83 n.; 2 Wheel. Am. C. L. 154.
 — (in U. S. bankruptcy act of 1841). 2 Ben. (U. S.) 196.
 — (in U. S. constitution). 5 Hill (N. Y.) 327, 339, 348.

BANKRUPTCY COURTS.—The present English bankruptcy courts are the London Bankruptcy Court, the Court of Appeal, and the local bankruptcy courts created by the Bankruptcy Act, 1869. The London Bankruptcy Court consists of a judge called the Chief Judge in Bankruptcy, and a number of registrars, clerks, ushers, &c. (Bankr. Act, 1869, § 61.) It is a principal court of record, having original jurisdiction within the city of London and the metropolitan district, and appellate jurisdiction from the local bankruptcy courts. The Court of Appeal in Bankruptcy, which hears appeals from the London Bankruptcy Court, was formerly the Court of Appeal in Chancery (*Id.* § 71); it is now the Court of Appeal of the Supreme Court of Judicature, as constituted by the Judicature Act, 1875 (Jud. Act, 1875, § 9); an appeal may be brought from it to the House of Lords in the same manner as before the Act of 1875, namely, by leave of the Court of Appeal. (Bankr. Act, 1869, § 71.) The local bankruptcy courts are the provincial county courts; that is, all the county courts except the metropolitan ones, the district of which is included in that of the London Bankruptcy Court. (*Id.* § 59.) For a history of the old bankruptcy courts, see Robs. Bankr. ch. I. and II.; and see COMMISSION.

BANKS, (the different kinds). 17 Wall (U. S.) 109.
 — (neglecting to redeem their notes). 3 Wend. (N. Y.) 595, 609.
 — (of a river). 13 How. (U. S.) 381, 416; 18 La. 278; 46 Me. 127.

BANLEUCA.—An old law term, signifying a space or tract of country around a city, town or monastery, distinguished and protected by peculiar privileges.—*Spel. Gloss.*

BANLIEU, or **BANLIEUE**.—A French and Canadian law term, having the same meaning as *banleuca* (q. v.)

BANNERET, or **BANRENT**.—A banneret, or banrent, is said to be a knight made in the field, with the ceremony of cutting off the point of his standard, and so making it like a banner. They are accounted so honorable that they are permitted to display their arms in a banner, in the field, as barons do. See Seld. Tit. of Hon.

BANNI—**BANNITUS**.—In old law, one under a ban (q. v.); an outlaw or banished man.—*Britt. c. 12, 13; Calv. Lex.*

BANNUM, or **BANNUS**.—See **BAN**.

BANS, or **BANNS OF MATRIMONY**.—A public proclamation of the intention of parties to contract a marriage.

It is required by the English and Scotch law, and also in some of the States, the object being to afford to any person who has grounds of objection to the proposed marriage an opportunity to make his objection. The proclamation is made in church, during public worship, on three consecutive Sundays. It may be dispensed with, however, if the parties procure a special license to marry.

BAR.—OLD FRENCH: *barre* (Co. Lit. 372a), a rod or rail; of Celtic origin. Skeat Etym. Diet.

§ 1. **Of a court, or legislative body**.—A bar is a partition across a court of justice. In the Houses of Lords and Commons, the bar forms the boundary of the house, and therefore all persons, not being members, who wish to address the house, or are summoned to it, appear at the bar for that purpose; thus, in arguing appeals in the House of Lords, the counsel stand at the bar. The word is used in a similar sense in America, when speaking of the bar of either house of congress, or of a State legislature.

§ 2. **In the ordinary courts of England**, the bar is a more or less imaginary barrier separating the bench and the front row of counsel's seats from the rest of the court; in theory, only queen's counsel, serjeants-at-law, and a few other barristers are allowed within the bar, together with solicitors (as officers of the court) and parties litigant who appear in person, while junior or utter barristers and the general public remain without the bar. In America every lawyer practising before the court is entitled to sit within the bar.

§ 3. **"At bar"—"Call to the bar."**—Hence, bar has acquired the secondary sense of "court" in such phrases as the "case at bar," "disclaimer at the bar," meaning "in court," and the tertiary sense of the whole body or profession of barristers; the operation of being admitted to practise as an utter barrister is described as being "called to the bar," while serjeants and queen's counsel, on taking their degrees, are called within the bar; that is, invited by the judges to take their seats in the front row. Special pleaders and certificated conveyancers are said to be below the bar. (See **BARRISTER**.) In America, the word when used in this connection

includes the entire profession of the law, and "admission to the bar" means admission to practice law.

§ 4. **Trial at bar.**—A trial at bar is a trial by a jury before a full court (*i. e.* three or four judges), instead of before a single judge at *Nisi Prius*. Trial at bar was originally the normal mode of trial; but as it made it necessary to bring up the jury and witnesses from the *locus in quo* to Westminster, the practice of trial at *Nisi Prius* was introduced. (*See NISI PRIUS*.) Trials at bar in civil cases have long been practically obsolete, but they are still held occasionally in criminal cases of importance. (*Archb. Pr.* 346.) *See TRIAL*.

§ 5. **Bar to a right.**—Bar also signifies a metaphorical barrier or obstacle. Thus, in the old law, a fine with proclamations levied by a tenant in tail was said to be a bar to the estate tail, because it took away the right of the issue in tail. (*See FINE*.) So, a judgment is a bar to another action for the same right, and a debt or right is barred by the statute of limitations when the time for the enforcing it has gone by; this is sometimes called an "absolute bar," as opposed to a presumptive bar, which arises from laches or lapse of time otherwise than under the statutes. (*See Angus v. Dalton*, 3 Q. B. D. 85.) In pleading, anything is a bar which is an answer to the plaintiff's claim.

§ 6. **Plea in bar.**—In the old books bar frequently means a "plea in bar," and is so called "because it barreth the plaintiff of his action." (*Co. Litt.* 303b.) Bars in this sense were formerly divisible into many kinds, *e. g.* bars to common intent, bars to special intent, bars at large, bars material, &c., but these are all now obsolete. *Plowd.* 26 *et seq.*; *Heath Max.* 136. *See PLEA*.

BAR FEE.—In English law, a fee exacted by the sheriff for every prisoner who is acquitted of the charge against him.

BAR-KEEPER, (a servant, within meaning of intestate act). 3 Serg. & R. (Pa.) 351.

BAR PLEA, (in a statute). 1 Halst. (N. J.) 383.

BARAGARIA.—In Spanish law, a concubine.

BARATERIUS—BARATOR.—*See BARRETRY*.

BARBICANAGE.—Money paid to support a barbican or watch-tower.—*Bouvier*.

BARE TRUSTEE.—*See TRUSTEE*.

BARGAIN, (distinguished from "agreement"). 6 Conn. 81; 17 Mass. 122.

— (in statute of frauds and perjuries). 17 Mass. 131; 2 Bos. & P. 238; 6 East 307.

BARGAIN AND SALE.—

§ 1. **Of goods, &c.**—In its primary sense, "bargain and sale doth signify the transferring of the property of a thing from one to another upon valuable consideration," (*Shep. Touch.* 221), and is accordingly used with accuracy to signify an agreement for the sale of goods by which the property in them passes immediately to the purchaser, as opposed to an executory contract of sale, or contract by which the property in the goods is not to pass to the purchaser until a future time, or until some condition has been fulfilled. *Benj. Sales*, 3, 227. *See CONTRACT; SALE*.

§ 2. **Of land, under Statute of Uses.**—Before the Statute of Uses, if a person contracted with another for the sale of land for a pecuniary consideration and paid the money, but no proper conveyance (such as a feoffment) was executed to him, then although the legal estate in the land remained in the vendor, yet in equity the purchaser was looked upon as entitled to the land, and the vendor was therefore said to be seised to the use (*i. e.* for the benefit) of the purchaser. Consequently, when the Statute of Uses (*q. v.*) was passed, such a bargain and sale of land vested the legal estate in the purchaser without any livery of seisin. (Nor is it necessary that the purchase money should be actually paid if the deed states that it has been paid; *Shep. Touch.* 222.) To prevent land from being thus secretly conveyed, the Stat. 27 Hen. VIII. c. 16, enacted that every bargain and sale of estates of freehold should be enrolled within six months from its date. Enrollment being considered undesirable, a bargain and sale was thenceforward only used for conveyances of estates less than freehold, as in the case of the ordinary lease and release (*q. v.*) and a mortgage by a freeholder for a term of years, which is at the present day appropriately made by the words "bargain and sell." 1 Davids. Conv. 73; *Wms. Seis.* 141

§ 3. **At common law.**—In England, the words "bargain and sell" are the words commonly used in the execution of common law authorities. Thus, executors having a naked power under a will to sell real estate convey by the words "bargain and sell;" such words have no effect in themselves, but merely designate the persons to whom the executors sell, and who are to take by virtue of that designation under the will. (1 Davids. Conv. 73.) The commonest instance of this is where a testator wishes to empower his executors to sell his copyholds, and, at the same time, wishes to prevent the expense of an admittance, which would be necessary if he devised the land to them; he therefore merely gives them a power of sale, which they execute by a deed called a "bargain and sale."

§ 4. **In the American law** of real property, "bargain and sale" is the name of a kind of conveyance in frequent use, "bargain and sell" being usually the operative words, but any other words that are sufficient to raise a use upon a valuable consideration are equally effectual; thus, "alien," "grant," "demise and grant," "make over and grant," "release and assign," are sufficient to pass the land. 3 Johns. (N. Y.) 484; 8 Barb. (N. Y.) 463.

BARGAIN AND SALE, (defined). 9 Serg. & R. (Pa.) 177.

— (deed of, under statute of uses). 2 Green (N. J.) 49; 3 Halst. (N. J.) 90; 16 Johns. (N. Y.) 515; 2 Hill (N. Y.) 659; 9 Wend. (N. Y.) 611, 616, 617; 4 Wheel. Am. C. L. 220; 5 Barn. & C. 101; Godb. 7.

BARGAIN AND SELL, (in an agreement to sell land). 4 T. B. Monr. (Ky.) 463.

— (in a deed). 2 Cai. (N. Y.) 188; 4 Cow. (N. Y.) 325; 1 Murph. (N. C.) 343, 348; 15 East 538; 5 T. R. 124.

BARGAINED AND SOLD, (defined). 71 Ill. 214.

— (goods, action for). 5 Barn. & C. 857.

BARGAINEE.—(1) The party to a bargain to whom the subject-matter of the bargain, or thing bargained for is to go; (2) the grantee in a deed of bargain and sale (*q. v.*)

BARGAINOR.—The party to a bargain who is to deliver the thing bargained for and receive the consideration or price.

BABILLA, (in an indictment). 1 Pick. (Mass.) 375.

BARLEY, (in an indictment for setting fire to, under statute applying to "corn or grain"). 4 Car. & P. 548.

BARMOTE COURTS.—Courts held in certain mining districts belonging to the Duchy of Lancaster, for regulation of the mines, and for deciding questions of title and other matters relating thereto. 3 Steph. Com. 347, *n.* (b); Stat. 14 and 15 Vict. c. 94. *See* STANNARIES.

BARN, (grant or demise of). 4 Rawle (Pa.) 339, 342; 6 Wheel. Am. C. L. 408.

— (in an indictment for burglary). 26 Ohio St. 420.

— (in statute against arson). 23 Iowa 565.

BARO.—An old law term signifying, originally, a "man," whether slave or free. Later on it got to mean a "freeman," a "strong man," a "good soldier," a "baron" (*q. v.*) In addition to these meanings, Spelman says it also meant a "vassal," or "feudal tenant or client," and that "husband" was the most common meaning of the word.

BARON.—LATIN: *baro*, a man; a freeman.

§ 1. **Nobility.**—The most general title of nobility in England. The baron is next in rank to the viscount. 1 Bl. Com. 398, 399.

§ 2. **Exchequer.**—The judges of the Court of Exchequer (*q. v.*) were called "barons," and the chief judge of the court was called the "Lord Chief Baron of the Exchequer." By the Judicature Acts, 1873-5, they were transferred to the High Court of Justice, of which they form the Exchequer Division. The Lord Chief Baron is also *ex-officio* a member of the Court of Appeal. His successors will bear the same title until the office is abolished by Order in Council. (Jud. Act, 1873, §§ 5, 6, 31, 32.) The successors of the junior barons are styled "justices of the High Court." Jud. Act, 1877, § 4.

§ 3. **Husband.**—Baron is the old word for husband; "baron and feme," in the old books, means husband and wife.

§ 4. **Freeman.**—"And in ancient charters and records, the barons of London and barons of the Cinque Ports, do signify the freemen of London and of the Cinque Ports." Co. Litt. 372a. *See* COURT BARON.

BARON AND FEME, or FEMME.

—Literally, a man and woman, but by usage a husband and wife. (1 Bl. Com. 442; Spel. Gloss. *v.* Baro.) The phrase is not yet quite obsolete, and is very frequently found in the old writers.

BARONAGE, or BARONAGIUM.—

(1) The whole body of the nobles, or barons; (2) the retinue of a baron.—*Spel. Gloss. v.* Baro.

BARONET.—An English name or title of dignity (but not a title of nobility) established A. D. 1611 by Jac. I. It is created by letters patent, and descends to the male heir.—*Spel. Gloss.*

BARONS OF THE CINQUE PORTS.—See **BARON**, § 4.

BARONS OF THE EXCHEQUER.—See **BARON**, § 2.

BARONY.—The dignity of a baron; a kind of tenure; lands held by a baron.—*Spel. Gloss.*

BARRA, or BARRE.—(1) In old practice, a plea in bar. (See **BAR**, § 6; also **PLEA**.) (2) The bar of the court. (See **BAR**, §§ 1, 2.) (3) A barrister (*q. v.*)

BARRATOR, BARRETOR, or BARRETTOR.—See **BARRETRY**.

BARRATOR, (common, defined). 15 Am. Dec. 322 n.

BARRATRY.—NORMAN-FRENCH: *barat*, fraud, chicanery. The etymology of which is doubtful. Britt. 224 b; Littre, s. v. Baraterie.

(1) In the law of merchant shipping, any illegal, fraudulent or knavish conduct of the master or mariners of a ship, by which the freighters or owners are injured, is, by our law, barratry. This offence may be considered, first, as an act of misfeasance or wilful neglect against the owner, recognized by the common and maritime law, and, secondly, as subjecting the offender to punishments imposed by statute. (Maud. & P. Mer. Sh. 105.) Thus the neglect to pay port dues, and smuggling, are instances of barratry giving rise to civil liability for any injury thereby caused to the owner (*Id.* 106), and maliciously destroying or damaging a vessel is made criminal by various acts. (*Id.* 107.) (2) In the Scotch law, the crime of a judge who is induced by bribery to pronounce a judgment.—*Wharton*.

BARRATRY, (defined). 8 Cranch (U. S.) 39; 3 Pet. (U. S.) 222; 2 Wash. (U. S.) 61; 11 Mart. (La.) 602; 12 Cush. (Mass.) 360; 2 Cai. (N. Y.) 67.

— (by master of a vessel, defined). 15 Wend. (N. Y.) 10.

— (what constitutes). 2 Dall. (U. S.) 137; 4 *Id.* 294; 3 Pet. (U. S.) 222; 5 Day (Conn.) 1, 7; 2 Cush. (Mass.) 500; 9 Allen (Mass.) 217.

— (when includes "theft"). 19 Pick. (Mass.) 34.

— (does not include "negligence"). 4 Daly (N. Y.) 1.

— (in exception in bill of lading). L. R. 9 Q. B. 546.

— (in marine insurance law). 4 Daly (N. Y.) 1; 80 N. Y. 71, 81; 4 Am. Dec. 480, 486 n.; Cowp. 143.

BARRETRY, (in policy of marine insurance). 5 Day (Conn.) 1; 2 Cai. (N. Y.) 67; 11 Johns. (N. Y.) 40; 1 Str. 581.

BARREL.—A measure of capacity, equal to thirty-six gallons.—*Bouvier*.

A measure of wine, ale, oil, &c. Of wine it contains the eighth part of a tun, the fourth part of a pipe, and the moiety of a hoghead, i. e. thirty-one gallons and a half. (Stat. 1 Ric. III. c. 13.) Of beer it contains thirty-six gallons, and of ale, thirty-two gallons. (Stat. 23 II. VIII. c. 4, and 12 Car. II. c. 23.) It is declared that the assize of herring barrels is thirty-two gallons, wine measure, containing in every barrel usually a thousand full herrings. (Stat. 13 Eliz. c. 11.) The eel barrel contains thirty gallons. (Stat. 2 H. VI. c. 13.)—*Jacob*.

BARREL, (in a contract). 100 Mass. 518; 7 Cow. (N. Y.) 681.

— (in a writ of replevin). 9 Allen (Mass.) 500.

— (in inspection laws). 11 Ired. (N. C.) L. 70.

BARREN GROUND, (exempted from payment of tithes). Ld. Raym. 991; Freem. Ch. 334.

— (under Stat. 2 and 3 Edw. VI. c. 13). 2 Mau. & Sel. 349; 6 Mod. 96; 6 Taunt. 297-9.

BARREN MONEY.—A non-interest-bearing debt.

BARRENNESS.—Incapacity to propagate, or bear children. A ground for dissolution of marriage when it arises from impotence existing at the time of the marriage. See **DIVORCE**; **IMPOTENCE**.

BARRETRY—BARRETTOR.—

§ 1. "A barrettor is a common mover, and exciter or maintainer of suits, quarrels or parts, either in courts or elsewhere in the country." Co. Litt. 368 a.

§ 2. Common barrettry is the offence of frequently exciting and stirring up suits and quarrels between the queen's subjects, either at law or otherwise. The punishment for this offence, which is a misdemeanor, is by fine and imprisonment, and the offender is sometimes disbarred from practising as an attorney or solicitor. 4 Bl. Com. 134; Stat. 12 Geo. I. c. 29; 1 Russ. Cr. 362; Steph. Cr. Dig. 86. See **MAINTENANCE**.

BARRIER.—In the law of mines, a wall of coal left between two mines. In the absence of an agreement, easement or custom to the contrary, every mine owner may work up to the boundary of his land, although his doing so may cause injury to his neighbor, *e. g.* by letting

water into his neighbor's mine; but he is liable for injury caused by negligence or malice. (Gale Easem. 442.) In practice, it is usual for a mine owner to work to the boundary on the dip of the coal bed, and to leave a barrier of his own mineral on the rise, so as to prevent the water of the adjacent mine on a higher level from flooding his mine. If the "upper owner" (*i. e.* the owner of the adjacent mine on the rise) trespasses on the barrier so as to let the water through, he will be liable not only for the trespass, but also for the consequential injury. Bain. M. & M. 425. See BOUNDARIES.

BARRING ESTATE TAIL.—Formerly an estate tail could only be barred by levying a "fine" or suffering a "common recovery." (See those titles.) At the present day, it can only be barred in the case of freeholds, by a disentailing deed, and, in the case of copyholds, by surrender, or (but only if the estate is equitable) by a disentailing deed executed in accordance with the Stat. 3 and 4 Will. IV. c. 74.

BARRISTER.—A person entitled to practise as an advocate or counsel in the superior courts. The rank or degree of barrister can only be conferred by one or other of the Inns of Court (*q. v.*), where the candidate is required to pass through a preliminary course of study and examination. (1 Steph. Com. 19; 3 *Id.* 270.) Barristers who have attained the rank of queen's counsel or serjeants-at-law (*q. v.*) take precedence of those who have not, and who are sometimes called "utter barristers," because formerly in arguing moots they sat "uttermost on the formes, which they call the barr." (See Man. S. ad L. 262.) It might at first be supposed that "utter barrister" means one who addresses a court from outside the bar, as opposed to queen's counsel and serjeants, who sit within the bar; but this is negated by the old use of "inner barrister" in the sense of student. (Man. *ubi supra*; 5 Reeves Hist. Eng. Law 247.) A barrister cannot maintain an action to recover his fees for work done as counsel, nor, on the other hand, is he liable to an action for negligence in transacting the business of his client. He is also privileged from the penalties of libel and slander for matter spoken or written by him in the course of business. (See PLEADER; PRIVILEGE; SO-

LICITOR.) The word is not used in the United States, but our word "counsellor" (*q. v.*) expresses very nearly the same idea.

BARTER.—An exchange of articles of personal property one for the other. It differs from "sale," which is an exchange of property for money.

BARTON.—In old English law (in Devonshire especially), the demesne lands of a manor; sometimes the manor house itself; also an out-house or fold yard.—*Burrill*.

BAS CHEVALIERS.—Inferior knights by tenure of a base military fee, as distinguished from "barons" and "bannerets" (*q. v.*), who were chief or superior knights.—*Blount*; *Cowell*; *Kenn. Gloss*.

BASE COURT.—In English law, an inferior court, not of record.—*Cowell*.

BASE ESTATE.—The estate which "base tenants" (*q. v.*) have in their land.—*Cowell*.

BASE FEE.—A base or qualified fee is an estate which hath some qualification subjoined thereto, and which must cease or be determined whenever such qualification is at an end. As in the case of a grant to A. and his heirs, "tenants of the manor of Dale;" in this instance, whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated. So, when Henry VI. granted to John Talbot, "lord of the manor of Kingston-Lisle, in Berks," that he and his heirs, "lords of the said manor," should be peers of the realm by the title of Barons of Lisle; here John Talbot had a base or qualified fee in that dignity, and the instant he or his heirs quitted the seigniorship of that manor, the dignity was at an end. These estates are fees, because it is possible that they may endure forever in a man and his heirs; yet as that duration depends on certain collateral circumstances which qualify and debase the purity of the donation, it is therefore called a base or qualified fee. In a more limited sense, a base fee is used to denote a fee simple derived out of a fee tail, which has been barred by one whose power extends only to bar his own issue heirs in tail; in this case, so long as such heirs in tail or their issue endure, the fee simple endures, but determines when they become extinct.

BASE FEE, (defined). 2 Mass. 62.

BASE POINT, (in survey). 2 Wheel. Am. C. L. 484.

BASE RIGHT.—A Scotch law term for a subordinate right, *e. g.* the right which a subvassal had in lands held by him.—*Bell Dict.*

BASE SERVICES.—Such services as were fit only for peasants, and were unworthy to be rendered by others than those of servile rank. See 2 Bl. Com. 61, 62.

BASE TENANTS.—(1) Tenants who held their lands at the will of their superior lord, as

distinguished from "frank tenants" (*q. v.*) who were freeholders; (2) tenants who rendered to their lords services in villenage.—*Cowell*.

BASE TENURE.—A tenure by villenage, or other customary service, as distinguished from tenure by military service; or from tenure by free service.—*Cowell*.

BASILEUS.—GREEK: *Βασιλεύς*, king

The title of the Emperor Justinian in Novs. 2, 3, 4, 6 *et seq.*; and sometimes applied to the king of England, in charters prior to the Norman conquest. (1 Bl. Com. 242.)—*Burrill*.

BASILICA.—A compilation of Roman and Greek law, being chiefly an abridgment of Justinian's *Corpus Juris Civilis*, made in Greek, about the beginning of the tenth century. It consisted of sixty books, only thirty-six of which have survived. It was the law of the east until the conquest of Constantinople A. D. 1453.—*Bouvier*; *Burrill*.

BASSE JUSTICE.—Low justice; the power of a feudal lord to try petty criminals and trespassers.

BASTARD.—A child whose parents were not married to each other at the time of its birth. Its mother is entitled to its custody, and is bound to maintain it. If she has not the necessary means, she may, by proper process, compel the putative father to pay her a periodical sum of money for its maintenance. (See **BASTARDY**.) By the English law, a bastard is not entitled to the name of either its father or mother, nor can it be heir or next of kin to any one, or have an heir or next of kin, except its own issue; and he may not marry a person who would have been related to him within the prohibited degrees if his parents had been married before his birth. (2 Steph. Com. 297; Stat. 7 and 8 Vict. c. 101; Bastardy Acts of 1872 and 1873; Co. Litt. 243b; Litt. §§ 399 *et seq.* As to the etymology of the word, see 1 Diez 57.) In the United States these disabilities, so far as they relate to property rights, are pretty generally removed by the various State statutes relating to descent and distribution, and as to many of the States the above definition is incorrect, inasmuch as statutes declare that the intermarriage of the parents, even after the birth of a child, legitimates it. But, it is believed, these statutes were not intended to apply to cases of adulterine bastardy, *i. e.* where one or both of the parents were married to third persons at the time of the birth of

the child, and such third persons afterwards dying, the parents of the child became husband and wife. To prove the child of a married woman to be a bastard, it must be shown that her husband could not have had "access" (*q. v.*) during the lawful period of "gestation" (*q. v.*) As to the old rule of "bastard issue," see **MULIER**.

BASTARD, (defined). 30 Tex. 115; 7 Wheel. Am. C. L. 150; 14 East 277; 3 P. Wms. 275.

—— (child of a slave is). 30 Tex. 115, 135.

BASTARD EIGNE.—Bastard elder. In old English law, a child born before the marriage of his parents, as distinguished from a child of the marriage, who was called *puisne*, younger, or since born; or *mulier puisne*, since born of the wife. 2 Bl. Com. 248.

BASTARDA.—In old English law, a female bastard.

Bastardus nullius est filius, aut filius populi: A bastard is nobody's son, or the son of the people.

BASTARDY.—(1) The condition or status of being a bastard; (2) the offence of begetting a bastard; (3) the statutory proceeding resorted to for the purpose of determining the paternity of a bastard, and to compel the father to maintain it, lest its support should become a public charge.

BASTON.—In old English law, a baton, club or staff. A term applied to officers of the wardens of the prison called the "Fleet," because of the staff carried by them.—*Cowell*; *Spel. Gloss.*; *Termes de la Ley*.

BATTEL.—LAW FRENCH: *bataille*.

The trial by wager of battle was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that heaven would give the victory to him who was in the right.—*Brown*.

BATTERY.—An assault whereby any force, however small, is actually applied, directly or indirectly, to the person of another, or to the dress worn by him, against his will and without reasonable cause. (Steph. Cr. Dig. 162; 1 Russ. Cr. 957; Underh. Torts 119; Broom Com. L. 687.) A battery gives rise to an action for damages, and an intentional or willful battery is also punishable as an offence in the same way as an assault (*q. v.*) See **CRIME**; **JUSTIFICATION**; **TORT**.

BATTERY. (defined). 6 Mod. 149.
 — (what constitutes). 6 Mod. 172.
 — (the necessary force). 17 Tex. 515.

BATTURE.—A French word, used principally in Louisiana, and with reference to the Mississippi river. It means a bottom of sand, stone, &c., rising upwards and towards (or above) the surface of a river. See 2 Kent Com. 428 n.; 6 Mart. (La.) 19, 216.

BAWDY-HOUSE.—A house of ill-fame; a "brothel" (*q. v.*) Such a house is a common nuisance, and its maintenance is punishable as an indictable misdemeanor, under the statutes of the several States. See DISORDERLY HOUSE.

BAY.—A pond head, or a pond formed by a dam for the purpose of driving mill-wheels.—*Blount.*

BAY, (in railroad charter). 9 N. Y. 580.

BAY OR HARBOR, (in a description of property). 13 Gray (Mass.) 257.

BAYOU.—A creek or stream which forms the outlet of a lagoon or swamp. Used principally in the Southern Gulf States.

BEACH.—(1) The shore, or strand. The strip of land between high and low water mark. The shore of the sea, or of a lake, which is washed by the tide and waves. (2) To "beach a vessel" is to run her ashore. This is frequently done in cases of leaking, or where the vessel is on fire, &c.

BEACH, (defined). 41 Conn. 14; 15 Me. 237; 48 Me. 68; 6 Hun (N. Y.) 257.

— (synonymous with "shore"). 28 Me. 180; 5 Gray (Mass.) 323, 335.

— (in conveyance). 6 Hun (N. Y.) 257.

— (in a deed). 48 Me. 68; 5 Gray (Mass.) 335; 13 Id. 257.

— (in a statute). 15 Me. 237.

BEACON.—A signal fire for the guidance of mariners; a "light-house" (*q. v.*)

BEACONAGE.—Money paid for the maintenance of a beacon or signal-light.—*Bur-rill.*

BEADLE.—In English ecclesiastical law, an inferior parish officer, appointed by the vestry, whose duty it is to attend the meetings of the vestry, to notify the parishioners of such meetings, to execute the orders of the vestry, to preserve order during church services, to attend at inquests, to assist the constables in arresting vagrants and petty offenders, and to perform various duties under the poor laws.

BEARER.—When the benefit of a security or document of title can be claimed by any person who presents it for that purpose, it is said to be a document to bearer. For instance, if a check is drawn thus: "pay the bearer," or "pay A. B. or bearer," or "pay cash or bearer," &c., the banker may pay it to any one who presents it, unless its negotiability is restrained. See BILL OF EXCHANGE; CHECK; INDORSEMENT; NEGOTIABLE; POSSESSION.

BEARER, (in law of commercial paper). 5 Abb. (N. Y.) Pr. N. S. 11; 2 Hill (N. Y.) 606; 36 How. (N. Y.) Pr. 190; 3 Keyes (N. Y.) 365.
 — (bonds payable to). 4 Dowl. & Ry. 641.

— (note payable to). 1 Johns. (N. Y.) 143; 3 Id. 439; 5 Wend. (N. Y.) 411; 2 Barn. & Ad. 385; 1 Campb. 175; 2 Nev. & M. 453.

BEARER OF A CHALLENGE, (in statute against duelling). South. (N. J.) 49.

BEARER OR ORDER, (note without the words). 9 Johns. (N. Y.) 217; 6 T. R. 123.

BEARERS.—In old English law, those who bore down upon, or oppressed others.—*Cowell; Jacob.*

BEARERS, (in an indictment). 8 Mass. 59.

BEARING AND PROVIDING ARMS, (in statute). 8 Mod. 17.

BEARING DATE.—Dated. A phrase used in pleading and conveying to indicate the date of an instrument recited or referred to.

BEARING DATE, (in a plea). 6 Halst. (N. J.) 325.

— (allegation in declaration). *Id.* Raym. 335, 336.

— (deed, in pleading). 3 Salk. 120.

BEARING INTEREST, (bill of exchange). 1 Stark. 452.

BEAST.—Any four-footed animal adapted to use for labor, food or sport. The legal sense of the word in America, is nearly synonymous with "cattle" (*q. v.*) In English law, it is principally confined to such phrases as: **Beasts of the chase**, the buck, doe, fox, martin and roe; **beasts of the forest**, which include all wild beasts of venery, and **beasts of the warren**, which are the hare, coney and roe. Co. Litt. 233.

BEASTS, (in a statute). 4 Barn. & C. 200.

— (in a penal statute). 1 Minn. 292, 296.

BEAUPLEADER.—Fair pleading. Prior to the statute of Marlebridge (52 Hen. III. c.

11,) a fine was imposed upon one who (according to Fitzherbert) did not plead fairly (Fitz. N. B. 270a,) or who, (according to Lord Coke) having interposed a vicious plea, desired to plead fairly by way of amendment (2 Inst. 122, 123). The statute above mentioned abolished such fine and provided a writ called a "writ of beaupleader" prohibiting the sheriff, or other officer desiring to collect such fine, from doing so.

BECAUSE, (in pleading). 1 Saund. 117 n. 2 and 4.

BECCARIA.—Cesare Bonesana Beccaria was born at Milan in 1735, taught political economy there and died in 1793. His chief work is on Crimes and Punishments (*Dei Delitti e delle Pene*), which has been translated into almost all European languages.—*Holtz. Encycl.*

BED.—(1) The channel of a stream or river; the space between the banks over which the water is accustomed to flow. (13 How. (U. S.) 426.) (2) In the phrase "a divorce from bed and board" (*a mensa et thoro*) the word bed is used to express the right of marital intercourse or cohabitation to which the divorce puts an end.

BED, (of a river). 13 How. (U. S.) 381; 18 La. 278.

BEDS, NECESSARY FOR DEBTOR'S FAMILY, (in a statute). 15 Mass. 170.

BEDEL.—(1) A crier of a court, or messenger, whose duty it is to summon persons to appear and answer therein.—*Cowell*. (2) An officer of the forest.—*Blount*. (3) The rent collector for the king.—*Plowd.* 200. (4) An inferior parish officer; a beadle (*q. v.*)

BEDELARY.—In old English law, the territory over which a bedel has authority.—*Cowell*.

BEDEREPE.—The service of a feudal tenant in reaping the landlord's corn at harvest time.—*Blount*; *Cowell*.

BEDFORD LEVEL.—In England, lands within the Bedford Level are subject to various provisions as to registration of conveyances, contained in the Stat. 15 Car. II. c. 17; Dart Vend. 685; Willis v. Brown, 10 Sim. 127.

BEEF, (in a statute). 6 Watts & S. (Pa.) 269, 277, 279.

BEEF STEER, (in indictment). 2 Tex. App. 350.

BEER, (when synonymous with "strong liquor"). 3 Den. (N. Y.) 437; 24 How. (N. Y.) Pr. 289; 21 N. Y. 173; 3 Park. (N. Y.) Cr. 9.

BEER HOUSE.—See LICENSE.

BEER SHOP, (not a technical word like "beer house"). 16 Ch. D. 647, 721.

BEES, (property in, defined). 15 Wend. (N. Y.) 550.

BEFORE.—(1) Anterior to, as "before trial." (2) In the presence of, as a trial held "before" a certain judge; an affidavit sworn to "before" a particular officer, &c.

BEFORE FINAL HEARING OR TRIAL, (in a statute). 106 Mass. 192; 113 Id. 341.

BEFORE ME, (in jurat of affidavit). 6 Ad. & E. N. S. 528; 3 Green (N. J.) 274.

BEFORE MENTIONED ESTATE, (in a will). 2 Atk. 58.

BEFORE THE DIVISION OF MY ESTATE, (in a will). 12 Ch. D. 834.

BEFORE THE FIRST DAY OF THE TERM, (notice to be given). 5 Wend. (N. Y.) 137; 10 Id. 423.

BEFORE THE FIRST DAY OF THE TERM AFTER THE ACTION HAS COMMENCED, (in a statute). 4 Dall. 433.

BEFORE THE NEXT TERM, (in a statute). 1 Binn. (Pa.) 76; 1 Yeates (Pa.) 511.

BEFORE THE SAID TIME WHEN, &c., (in pleading). 1 Dowl. & Ry. 42.

BEFORE THE SITTING OF THE COURT, (in a statute). 5 Mass. 197.

BEFORE THE WIND, (in a statute respecting navigation). 1 Newb. Adm. 8; 9 McLean (U. S.) 152.

BEFORE TRIAL, (in a statute). 11 Ind. 440.

— (meaning "before plea pleaded"). 51 Ill. 296.

BEFORE US, (writ returnable). 5 Johns. (N. Y.) 233.

BEGGAR.—One who habitually solicits alms, or who subsists upon solicited charity. See VAGRANCY.

BEGGING FOR ALMS OR SOLICITING CHARITY, (in a statute). 12 Hun (N. Y.) 131.

BEGINNING AND BOUNDED, (in a conveyance). 8 Cow. (N. Y.) 274.

BEGINNING CORNER, (in a deed). 5 Wend. (N. Y.) 142, 146; 8 Id. 183; 2 Wheel. Am. C. L. 485.

BEGINNING OF THE WORLD, (any matter from, in a release). 4 Mas. (U. S.) 227.

BEGINNING TO DEMOLISH, (in a statute). 4 Car. & P. 237; 6 Id. 329.

BEGINNING TO KEEP HOUSE, (under bankruptcy act). 6 Bing. 363.

BEGINNING WITH THE ELDER, (in a devise). L. R. 1 H. L. 87.

BEGOTTEN, (in a devise). 1 Serg. & R. (Pa.) 378.

— (in a will). 1 Mau. & Sel. 124; 1 Meriv. 703; 2 Vern. 545.

— (in a will, synonymous with "borne"). 4 Johns. (N. Y.) 64.

— (shall be, in a settlement). 10 Mod. 398.

BEHALF, (witness testifying in his own). 6 Ill. 272.

BEHAVIOR.—Carriage; conduct; demeanor. Magistrates sometimes may require disorderly persons to give "surety to be of good behavior." See **ABEARANCE**; **RECOGNIZANCE**.

BEHETRIA.—A Spanish law term for lands situated in places where the inhabitants had the right to select their own lords.—*Bouvier*.

BEHIND HIM, (in a bequest). 3 Halst. (N. J.) 41.
 — (leaving no issue, in a will). 3 T. R. 143.

BEHOOF.—Advantage; profit; service. Used in conveyancing in connection with the words "use and benefit."

BEING ABOUT AND NOT EXCEEDING FIVE HUNDRED GALLONS, (in a search warrant). 97 (Mass.) 63.

BEING AT ONE-HALF EXPENSE, (in a contract for the conveyance of land). 1 Ohio 14.

BEING INDEBTED TO EACH OTHER, (in a statute). 8 Wend. (N. Y.) 113.

BEING OF SOUND WIND AND LIMB, AND FREE FROM ALL DISEASE, (in bill of sale). 10 Johns. (N. Y.) 484.

BEING SURVEYORS, (equivalent to averment that parties were surveyors). 2 Ld. Ken. 549.

BEING THE SAME PREMISES, (in a deed). 8 Allen (Mass.) 293; 124 Mass. 69, 270.

BEING THREATENED, (in a statute). 49 Ala. 350.

BELIEF.—The acceptance of a proposition as true, or of a fact as real or certain, by inference, or from evidence or information supplied by others, rather than from actual personal knowledge, or positive certainty. In most jurisdictions a pleading requiring to be sworn to may be verified either on knowledge or partly on knowledge and partly on "information and belief," *i. e.* that as to the matters stated in the pleading upon information and belief, the affiant believes the pleading to state the truth.

BELIEF, (defined). 4 Serg. & R. (Pa.) 137.
 — (distinguished from "knowledge"). 9 Gray (Mass.) 271.

— (in testimony). 9 Gray (Mass.) 274.
 — (not synonymous with "suspicion"). 5 Cush. (Mass.) 369.

— (of a witness). 10 Pet. (U. S.) 171.
BELIEVE, (in a statute). 5 Cush. (Mass.) 373, 374.

— (in instruction to jury). 38 Iowa 504.
BELIEVES, (in affidavit). 3 Wils. 427.

— (in affidavit for bail). 2 W. Bl. 850.
 — (in affidavit upon which perjury is assigned). 1 Leach C. C. 325.

BELLIGERENT.—In international law, a nation actually at war with another nation, as distinguished from a "neutral" (*q. v.*)

BELLIGERENTS, (defined). 44 Ill. 142.

Bello parta cedunt reipublicæ: Things taken during war go to the State. It is a fundamental maxim of public law, that everything captured as prize belongs primarily to the sovereign.

BELONGING, (in an indenture). 1 Chit. Gen. Pr. 157, 475; 2 Bing. 76.

— (in poor laws). 3 Conn. 467; 19 *Id.* 561.

— (lands thereunto, in a devise). 6 Munt. (Va.) 534.

BELONGING OR IN ANYWISE APPERTAINING, (in a deed). 3 Tyrw. 280.

BELONGS, (in a statute). 3 Conn. 467.

— (in an award). 11 Conn. 240.

BELOW.—(1) Inferior; of inferior jurisdiction, as "the court below," *i. e.* the court from which an appeal has been taken, or to which a writ of error is directed. (2) Auxiliary; preliminary, as "bail below." See **BAIL**, § 2.

BELOW HIGH WATER MARK, (in a proprietary grant). 3 Mass. 352.

BENCH.—**LATIN**: *bancus* (*q. v.*)

A high seat or tribunal, especially the seat of a judge in court. "Bench is properly applied to the justices of the Court of Common Pleas, because the justices of that court sit there as in a certain place, . . . and legall records tearme them *justiciarii de banco*," justices of the bench. (Co. Litt. 71 b.) The court was also called the "Common Bench," to distinguish it from the King's Bench (*q. v.*) "Bench" is also used to denote the whole body of judges, or a particular class of them, as opposed to the "bar," which denotes the barristers, counsellors, &c.

BENCH WARRANT.—Process issued against a party against whom an indictment has been found for the purpose of bringing him into court to answer the charge preferred against him. When an indictment has been found for a misdemeanor during the assizes or sessions, it is the practice for the judge attending the assizes, or for two of the justices attending the sessions, to issue a bench warrant, signed by him or them, to apprehend the

defendant. (Cowp. 239; 1 Chit. Cr. L. 338, 339.)—*Brown*. See WARRANT.

BENCHERS.—The members of an Inn of Court (*q. v.*), to whom "is chiefly committed the government and ordering of the house, as to men meetest, both for their age, discretion and wisdoms." (See Man. S. ad L. 261.) They decide questions as to calling persons to the bar and of disbaring those who have been called, and are guilty of misconduct. 1 Steph. Com. 19.

Benedicta est expositio quando res redimitur a destructione: That interpretation is commendable by which a thing is rescued from destruction. See BENIGNÆ FACIENDÆ SUNT, ETC.

BENEFICE.—This is a word of wide meaning, and is taken for any ecclesiastical promotion or spiritual living whatsoever. Ordinarily, however, it denotes what is technically called "a benefice with cure of souls," *i. e.* the office and emoluments of a rector or vicar of a parochial church, including the cure of souls, and in the case of a rector the freehold of the parsonage house, the glebe, the tithes and other dues, or, in the case of a vicar, a proportion of these emoluments. 1 Bl. Com. 384 *et seq.* See ADVOWSON; APPROPRIATION; CURATE.

BENEFICE D'INVENTAIRE.—This, in French law, corresponds to the *beneficium inventarii* of Roman law, and substantially to the English law doctrine, that the executor properly accounting is only liable to the extent of the assets received by him.—*Brown*.

BENEFICIAL DEVISE, (in a statute). 106 Mass. 474; 8 Am. Rep. 356.

BENEFICIAL INTEREST.—Advantage or profit arising out of a contract, or derived from an estate; as where a contract is made between two persons for the benefit of a third, or where A. holds an estate in trust for B.

BENEFICIAL POWER, (defined). 20 Hun (N. Y.) 360, 363.

BENEFICIARIES.—*Cestuis que trust*, persons for whose benefit property is held by trustees, executors, &c. See CESTUI QUE TRUST; TRUST.

BENEFICIO PRIMO.—A royal writ directing the chancellor to bestow a benefice in the king's gift upon a particular person.—*Reg. Orig.* 307.

BENEFICIUM.—(1) A "benefice" (*q. v.*) (2) A feudal grant by a lord to his followers. This was originally a grant at the will of the lord (*munera*), afterwards the grant was made for life and was called a *beneficium*. (3) A benefit, favor, or privilege of any kind.

BENEFICIUM CLERICALE.—Benefit of clergy (*q. v.*)

BENEFICIUM COMPETENTIÆ.—(1) In the civil law, the privilege of one who, being insolvent, transferred his property for the benefit of his creditors, to retain sufficient to live honestly according to his station in life; (2) in the Scotch law, the privilege of the grantor, or obligor, in a gratuitous obligation, to retain sufficient for his subsistence.—*Bell Dict.*

BENEFICIUM DIVISIONIS.—In the civil and Scotch law, the privilege of one of several co-sureties (cautioners) to insist upon paying only his *pro rata* share of the debt.—*Bell Dict.*

BENEFICIUM ORDINIS.—In the civil and Scotch law, the privilege of the surety to require that the creditor exhaust his remedy against the debtor, before calling upon him (the surety) to pay.—*Bell Dict.*

BENEFIT, (assessment for). 15 Wend. (N. Y.) 374; 19 *Id.* 651–699.

—— (in assignment of copyright). 4 Q. B. D. 483.

—— (for her sole use and, in a will). Coop. 285.

—— (for use and, legacy to *feme sole*). 3 Bro. Ch. C. 383, *n.*

—— (use and, bequest for). 4 Madd. 409; 5 *Id.* 491; 19 Ves. 419.

—— (use and, gift for). 1 Swanst. 547.

BENEFIT AND ADVANTAGE OVER LOSS, (owners of property assessed for). 3 Wend. (N. Y.) 454; 8 *Id.* 85; 9 *Id.* 257.

BENEFIT AND RELIEF, (in a statute). 1 Str. 275, 279.

BENEFIT BUILDING SOCIETY.—The old-fashioned name for what is now more commonly called a building society (*q. v.*)

BENEFIT OF CHILDREN, (in a statute). L. R. 6 Ch. App. 445.

BENEFIT OF CLERGY.—Originally, the exemption of the persons of clergymen from criminal process before the secular courts, in a few particular cases. Afterwards the clergy arrogated to themselves this exemption in the case of all crimes, and finally extended it not only to "every little subordinate officer belonging to the church or clergy, but even many that were totally laymen" (4 Bl. Com. 365): every one that could read being entitled to the *privilegium clericale*. The Stat. 4 Hen. VII. c. 13, limited the right, in the case of laymen, to one exemption, and directed them to be burnt in the hand in order that they might not claim it twice.

After being delivered from the secular court, the offender underwent a mock trial in the ecclesiastical courts. The privilege of clergy was restricted by various statutes, and finally abolished by Stat. 7 and 8 Geo. IV. c. 28. The act of Congress of April 30th, 1790, § 30, provides that it shall not be allowed upon conviction of any crime for which, by any statute of the United States, the death penalty is or shall be provided.

BENEFIT OF DISCUSSION.—In the civil law, the surety's right to have the property of the principal debtor applied in the first instance, before resort to him.

BENEFIT OF DIVISION.—Same as BENEFICIUM DIVISIONIS (*q. v.*)

BENEFIT OF INVENTORY.—In the civil law, the privilege of the heir, to limit his liability for the debts of the succession, to the value of the decedent's effects, by causing an inventory thereof to be made. See BENEFICE D'INVENTAIRE.

BENEFIT OF MY CHILDREN, (in a will). 1 Vern. 66.

BENEFITS, (in eminent domain law). 18 Minn. 155.

BENEFITS OF MY REAL ESTATE, (in a will). 4 Yeates (Pa.) 23.

BENERTH.—A feudal service rendered by the tenant to his lord with plow and cart.—*Cowell; Spel. Gloss.*

BENEVOLENCE.—See AID, § 3; AIDS.

BENEVOLENCE, (distinguished from "liberality and charity"). 3 Meriv. 17.

— (in a bequest). 105 Mass. 434.

BENEVOLENT, (defined). 4 Harr. (N. J.) 307, 313; Spenc. (N. J.) 489.

— (in a bequest). 2 Stew. (N. J.) 36.

BENEVOLENT INSTITUTION, (in a statute). 25 Ind. 518.

BENEVOLENT PURPOSE, (bequest for). 3 Meriv. 17; 9 Ves. 399.

— (in a devise). 111 Mass. 268.

BENEVOLENT SOCIETIES.—Societies established and registered under the Friendly Societies Act, 1875, for any charitable or benevolent purposes. (Friendly Soc. Act, 1875, c. 8, § 3. See the Fourth Report of the Friendly Soc. Comm. (p. xxxi), which gives a description of the "Order of Cemented Bricks," a benevolent society confined to officers of the royal navy, and established partly for convivial purposes and partly for "distributing discriminating charity in deserving naval cases.") In their constitution and management such societies resemble friendly societies (*q. v.*)

BENEVOLENT SOCIETY, (in a statute). 23 Minn. 92.

Benignæ faciendæ sunt interpretationes chartarum, ut res magis valeat quam pereat: Constructions of documents are to be made favorably, that the instrument may rather avail than perish. The case of *Roe v. Tranmarr*, 2 Sm. Lead. Cas. 530, is a most important case for reference with regard to the construction and interpretation of written instruments. The facts as quoted from Smith were as follows: "A., in consideration of natural love, and of £100, by deeds of lease and release granted, released, and confirmed certain premises, after his own death, to his brother, B., in tail, remainder to C. (the son of another brother of A.), in fee; and he covenanted and granted that the premises should, after his death, be held by B. and the heirs of his body, or by C. and his heirs, according to the true intent of the deed. Held, that the deed could not operate as a release, because it attempted to convey a freehold in futuro, but that it was good as a covenant to stand seized."

Benignior sententia in verbis generalibus seu dubiis est præferenda: The more liberal interpretations of general or doubtful words is preferable.

Benignius leges interpretandæ sunt quo voluntas earum conservetur: Laws are to be more liberally interpreted, so that their intent may be preserved.

BENTHAM.—Jeremy Bentham was born in London in 1748, was educated at Westminster and Oxford, entered at Lincoln's Inn in 1773, traveled in Russia and the east of Europe, and died on the 6th June, 1832. His works fill nine octavo volumes; the principal legal ones are the Fragment on Government, Principles of Morals and Legislation, Judicial Evidence, and numerous writings on codification and law reform (Bentham's Works by Bowring); many of his suggestions have been carried into effect; most of the others are impracticable.

BEQUEATH—BEQUEST.—**ANGLO-SAXON:** *dicwedhan*, to declare. Skeat Etym. Dict.

§ 1. To bequeath property is to leave it by will, and a bequest is a gift by will; the terms are only applied to personal property. A residuary bequest is a gift of the residue of the testator's personal estate, namely, of what is left after payment of debts and legacies, &c. See DEVISE; LEGACY; LEGATEE; RESIDUE.

§ 2. **Specific.**—A specific bequest (not a specific legacy) is where a testator bequeaths to a person all his property of a certain class or kind, *e. g.* all his pure personality. *Shepherd v. Beetham*, 6 Ch. D. 597.

§ 3. **Executory.**—An executory bequest is the bequest of a future, deferred,

or contingent interest in personalty. *See* EXECUTORY INTEREST.

BEQUEATH, (distinguished from "devise"). 36 Me. 211; 13 Barb. (N. Y.) 106.

BEQUEATH MY CHAMBERS, (in a will). 3 Barn. & Ad. 469.

BEQUEATH TO, (in a will). 3 Harr. (N. J.) 28.

BEQUEATHED, (in a will). 13 Ves. 379; 119 Mass. 523, 525.

BEQUEATHMENTS, (in a will). 3 Green (N. J.) 386.

BEQUEST, (defined). 89 Ill. 246.

BERCARIA.—In old English law, a sheep-fold; also a place where the bark of trees was laid to tan.—*Bowyer*.

BERCARIUS—BERCATOR.—A shepherd.

BEREWICA, or BERWICA.—In old English law, (1) a portion of a manor, or a small manor attached or belonging to a larger one.—*Spel. Gloss.* (2) A corn-farm.—*Ibid.* (3) A hamlet or village appurtenant to a town or manor.—*Blount; Burrill*.

BERGHMOTE, or BERGHMOTH.—*See* BARMOTE COURTS.

BERTON.—A large farm; the barn yard of a large farm. *See* BARTON.

BESAIEL, BESAILE, or BESAYLE.—A great-grandfather. A writ to enable the heir to gain possession of lands of which his great-grandfather died seized in fee-simple, from an abator who entered on the day of the great-grandfather's death. (3 Bl. Com. 186.) Abolished by Stat. 3 and 4 Wm. IV. c. 27, § 36.

BESIDE, (in a statute). 2 Mass. 27.

BESOT, (defined). 7 Ind. 440.

BEST, (as designating articles sold). 33 Mich. 348.

—— (some of my, linen, in a will). 2 P. Wms. 388.

BEST EVIDENCE.—That evidence which, under the circumstances existing at the time, is the best attainable, *i. e.* the highest grade of evidence procurable in the particular case. Thus, documents are the best evidence of their contents, but if lost or destroyed, copies, or even oral evidence is admissible.

BEST EVIDENCE, (defined). 65 Me. 465.

BEST OF HIS ABILITY, (in bond of public officer). 39 Iowa 9.

BEST OF HIS KNOWLEDGE AND BELIEF, (in answer in chancery). 1 Paige (N. Y.) 404.

BEST RENT, (in a demise). 10 East 278.

BEST RENT THAT CAN BE OBTAINED, (in a demise). 3 Esp. 79.

BEST YOU CAN, (in an order to buy cotton). 101 Mass. 470.

BEST YOU CAN WITH IT, (direction to agent of property). 21 Wend. (N. Y.) 610.

BET, (defined). 11 Ind. 14; 81 N. Y. 539.

—— (what constitutes). 7 Port. (Ala.) 463; 10 Tex. 260.

—— (on an election). 15 Gratt. (Va.) 653; 36 Ill. 201.

—— (synonymous with "wager"). 11 Ind. 14; 1 Bosw. (N. Y.) 212.

BETROTHMENT.—The plighting of troth. A mutual promise or contract between a man and woman competent to make it, to marry at a future time.

BETTER EQUITY.—The priority which a second or junior encumbrancer, who has taken security against subsequent prejudicial dealings by the party holding the legal title, has over a prior incumbrance not so secured.

BETTER, LEGAL, AND PARAMOUNT TITLE, (in act of Congress concerning public lands). 1 Scam. (Ill.) 344.

BETTER SECURING, (for the, in a mortgage). 8 Ves. 382.

BETTERMENTS.—(1) Improvements made upon an estate by the occupant or possessor, such as building, draining, fencing, &c., more extensive in character than mere repairs. (2) The increased value of an estate by reason of some public improvement thereon. *See* IMPROVEMENT.

BETWEEN, (defined). 1 C. E. Gr. (N. J.) 321, 368.

—— (distinguished from "till"). 16 Barb. (N. Y.) 347.

—— (does not exclude the termini). 2 Vr. (N. J.) 205, 212.

—— (excludes the termini). 1 Mass. 91; 12 Me. 361.

—— (highway described as leading). 2 Saund. 158 b, n. 6.

—— (in a deed). 1 Mass. 91.

—— (in a railroad charter). 2 Vr. (N. J.) 206.

—— (in a will). 3 Stew. (N. J.) 3.

—— (in bounds, in a deed). 5 Metc. (Mass.) 441.

—— (in contract to pay money). 14 Ill. 332; 6 Ind. 335.

—— (in insurance policy). 5 Metc. (Mass.) 439.

—— (in land reservation). 9 Wheat. (U. S.) 469.

—— (stipulation to deliver goods). 5 Abb. (N. Y.) Pr. N. S. 182.

BETWEEN MERCHANT AND MERCHANT, (in statute of limitations). 2 Atk. 612; 1 Bing. 333; 2 Vern. 276.

BETWEEN THE HOUSES, (in a deed). 3 Zab (N. J.) 126.

BETWEEN THE PARTIES, (in an agreement). 3 Dowl. & Ry. 503.

—— (in a plea). 1 Sax. (N. J.) Ch. 198.

—— (in a rule of reference). South. (N. J.) 686.

BETWEEN THEM, (in a devise). 2 Meriv. 70; 3 Ves. 631.

BEYOND SEA, (goods taken, not subject of replevin). 1 Show. 91.

—— (in a plea). 1 Harr. & J. (Md.) 453.

BEYOND SEAS, (in statute of wills). 24 Ill. 159.

BEYOND THE SEAS.—No part of the United Kingdom of Great Britain and Ireland, nor the Isle of Man, Guernsey, Jersey, Alderney, or Sark, nor any islands adjacent to any of them (being part of the dominions of her majesty), are deemed beyond the seas within the meaning of the Stat. 3 and 4 Will. IV. c. 27. And yet for certain purposes either or any of those places other than England may be regarded in law as being beyond the seas. Thus it appears to have been held that Dublin, or any place in Ireland, was beyond the seas within the meaning of the statute of limitations. 21 Jac. I. c. 16; King v. Walker, 1 Wm. Bl. 286; Nightengale v. Adams, Show. 91; Shelf. R. P. Stat. (4 ed.) 181. See *ante*, p. 6 n.

BEYOND THE SEAS, (defined). 1 Harr. & J. (Md.) 350.

—— (in a statute, equivalent "to out of the realm"). Wilberf. Stat. L. 125.

—— (in statute of limitations). 1 Cranch (U. S.) C. C. 475; 3 Cranch (U. S.) 174; 2 Dall. 217; 1 McLean (U. S.) 146; 7 Otto (U. S.) 637; 14 Pet. (U. S.) 141; 3 Wheat. (U. S.) 541; 11 Id. 361; 1 Wyom. T. 225; 23 Ala. 480; 8 Ark. 488; 26 Ga. 182; 8 Blackf. (Ind.) 508; 1 Harr. & J. (Md.) 350; 20 Pick. (Mass.) 304; 13 N. H. 79; 3 Johns. (N. Y.) 267; 1 Johns. (N. Y.) Cas. 80; 6 Ohio 125; 7 Ohio Pt. II. 235; 11 Ohio St. 690; 9 Serg. & R. (Pa.) 291; 1 Yeates (Pa.) 329; 2 McCord (S. C.) 331; 13 Am. Dec. 732; 6 Wheel. Am. C. L. 495; 2 Atk. 613; 8 Moo. P. C. 4; 4 T. R. 516.

BIAS.—An inclination, leaning, or propensity of the mind towards a particular idea, or in favor of a particular person or class of persons. It is a ground of challenge in respect of jurors, and disqualifies a judge to act. It may also have much weight in determining the credibility of witnesses.

BIAS, (defined). 12 Ga. 444.

—— (of juror, what is). 2 Ga. 173; 12 Ga. 444.

BID.—An offer of a certain price for a thing put up for sale at auction.

BIDALL, or **BIDALE**.—An invitation of friends to drink ale at the house of some poor man, who thereby hopes a charitable contribution for his relief. Something like this seems to be what we commonly call "house-warming,"

when persons are invited and visited in this manner on their first beginning house-keeping. —*Jacob*.

BIDDER.—One who offers a certain price for a thing on sale at auction; one who makes a bid.

BIDDING AT AN AUCTION, (if by owner, what allowance to be made). 3 East 337-341.

BIDDINGS.—Bids at an auction. See *BID*.

BIENNIALLY APPOINT, (in city charter). 68 N. Y. 479.

BIENS.—*FRENCH*: goods.

Property of every description, real and personal, except estates of freehold and inheritance. —*Bouvier*.

BIG, (in declaration for slander). 2 Dev. (N. C.) 115.

BIG-A—BIG-ATA.—A cart or chariot drawn with two horses, coupled side to side; but it is said to be properly a cart with two wheels, sometimes drawn by one horse; and in the ancient records it is used for any cart, wain, or wagon. —*Jacob*.

BIGAMUS.—A person that has married two or more wives, successively after each other, or a widow. It is mentioned in the Stats. 13 Edw. III. c. 2; 1 Edw. VI. c. 12; and 2 Inst. 273.

BIGAMY.—Every person who, having a wife or husband still living, wilfully goes through the form of marriage with any other person, commits the offense called bigamy. A person marrying again during the lifetime of his or her wife or husband is not guilty of bigamy if the wife or husband has been continually absent for seven years, and has not been known by such person to be living within that time, (Stat. 24 and 25 Vict. c. 100, § 57; Steph. Cr. Dig. 174; 3 Russ. Cr. 264,) nor of course is it bigamy for divorced persons to marry again. 4 Steph. Com. 279.

The statute called the *Statute de Bigamis*, is the 4 Ed. I. and the Stat. 1 Jac. I. c. 11, calls it "bigamy," where a person marries a second wife, &c., the first being living, which is felony; but this is properly "polygamy," and not "bigamy," which last is not where a person hath two wives together, but where he hath two wives one after another. (2 Inst. 273.) —*Jacob*.

BIGAMY, (marriage after divorce not). 5 Barb. (N. Y.) 117.

BIGOT.—A compound of several old English words, and signifies an obstinate person, or one that is wedded to an opinion, in matters of religion, &c.

BILAGINES.—LATIN.

By-laws of towns; municipal laws. *See* BY-LAWS.

BILAN.—A French term in use in Louisiana, for a book in which bankers and others enter their indebtedness and bills receivable. A balance sheet.

BILANCIIS DEFERENDIS.—A writ directed to a corporation for the carrying of weights to such a haven, there to weigh the wool that persons by our ancient laws were licensed to transport.—*Reg. Orig.* 270, 279 b.

BILATERAL CONTRACT.—A contract which binds the parties to perform reciprocal obligations each towards the other.

BILGING, (of a ship). 3 Pick. (Mass.) 46.

BILINGUIS.—A double-tongued man, or one that can speak two languages. Formerly applied to a jury that passed between an Englishman and a foreigner, whereof part were English and part strangers. Though this is properly a jury *de medietate lingue*.—*Jacob*.

BILL.—MIDDLE-ENGLISH: *bill*, a letter, writing; LAW LATIN: *bill*, a corruption of *bull*, a sealed writing; CLASSICAL LATIN: *bull*, a seal or stud of metal. Skeat Etym. Dict.

Bill primarily means a letter or writing. In addition to the kinds of bill described under subsequent titles, the word has the following meanings in law:

§ 1. **In legislation.**—In parliamentary practice bills are incomplete acts of congress, of a legislature, or of parliament. When a bill has passed both houses and received the assent of the executive, it becomes an act or statute (*q. v.*) (May Parl. Pr. 479 *et seq.*; 2 Steph. Com. 383.) Bills, like acts, are divided into public and private, but bills which, though they are local in their nature, are yet of public interest, are sometimes called "hybrid bills," and are introduced as public bills. May Parl. Pr. 693, 732.

§ 2. **Of attainder.**—A bill of attainder is a bill formulating an accusation against a peer or other high personage in a matter of public importance, declaring him to be attainted and his property to be forfeited. It resembles an impeachment (*q. v.*), except that it may be introduced in either house, and requires no evidence in the judicial sense. (4 Bl. Com. 259.) The United States constitution (Art. I. § 9) provides that "no bill of attainder . . . shall be passed." *See* ATTAINDER.

§ 3. **Indictment.**—In criminal procedure, an indictment is presented to the grand jury under the name of a bill, and is not technically an indictment until so found by the jury. *See* INDICTMENT.

§ 4. **Patent.**—In England, "bill" also signifies the draft of a patent for a charter, commission, dignity, office, or appointment; such a bill is drawn up in the attorney-general's patent bill office, is submitted by a secretary of state for her majesty's signature, when it is called the "queen's bill;" it is countersigned by the secretary of state and sealed by the privy seal, and then the patent is prepared and sealed. *See* CROWN OFFICE. Rep. Comm. on Fees 5, 9.

BILL, (synonymous with "note"). 7 Serg. & R. (Pa.) 462.

— (corporation created by). 22 Wend. (N. Y.) 78.

— (in banking). 18 Barb. (N. Y.) 462; S. C., 9 How. Pr. 530.

— (goods to be paid for by). 2 Campb. 530.

BILL CHAMBER.—A branch or department of the Scotch Court of Session, in which business is transacted similar to that which is done in England and America in chambers.—*Bouvier*.

BILL FOR FORECLOSURE.—A bill in equity filed by a mortgagee for the purpose of obtaining a sale of the mortgaged premises, and the payment of his debt with interest and costs. *See* FORECLOSURE.

BILL FOR NEW TRIAL.—A bill in equity filed after judgment obtained against complainant in an action at law, praying that an injunction issue to restrain proceedings to enforce such judgment, on the ground that facts exist which render it against conscience to enforce it. Such facts must either have been unavailable to the complainant in the law court, or he must have been prevented from availing himself of them by accident or fraud, unaccompanied by either fraud or laches on his part.

BILL FOR RELIEF.—*See* BILL OF COMPLAINT, § 5.

BILL-HEAD.—A printed form used by merchants and traders in making out their bills and rendering accounts to their customers.

BILL HOLDERS, (how to be paid). 2 Wheel Am. C. L. 179.

BILL IN CHANCERY.—See BILL OF COMPLAINT.

BILL IN EQUITY.—See BILL OF COMPLAINT.

BILL IN NATURE OF A BILL OF REVIEW.—A bill in equity filed by one not bound by a decree to obtain a re-examination and reversal of such decree.

BILL IN NATURE OF A BILL OF REVIVOR.—A bill in equity filed after the death of a party where it is not only necessary to bring in new parties but also to determine other facts imported into the litigation in consequence of such death. Thus, if the death of a party whose interest is not determined by his death, is attended with such a transmission of his interest, that the title to it as well as the person entitled, may be litigated in the court of chancery, as in the case of a devise of real estate, the suit is not permitted to be continued by a bill of revivor, but an original bill in the nature of a bill of revivor must be filed in order that the title as well as the character of the new party (the devisee) may be litigated. Where, on the other hand, the transmission of interest is by descent, the heir may be brought in by bill of review, as his title is determined by operation of law. Story Eq. Pl. (5 edit.) §§ 377 *et seq.*

BILL IN NATURE OF A SUPPLEMENTAL BILL.—A bill filed when new parties, with new interests, arising from events happening since the suit was commenced, are brought before the court, wherein it differs from a supplemental bill which is properly applicable to those cases only where the same parties, or the same interests remain before the court. Story Eq. Pl. (5 edit.) §§ 345 *et seq.*

BILL OBLIGATORY.—An absolute obligation for the payment of money, differing from a promissory note only in being under seal; a bill single (*q. v.*) or bill penal (*q. v.*) under seal.

BILL OBLIGATORY, (defined). 2 Serg. & R. (Pa.) 114.

BILL OF ADVENTURE.—A writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.

BILL OF ADVOCATION.—In the Scotch law, a bill or petition praying that the judgment of an inferior court be removed to a superior one for review.

BILL OF ATTAINDER.—See ATTAINDER; BILL, § 2.

BILL OF ATTAINDER, (defined). 35 Ga. 282.

BILL OF CERTIORARI.—A bill—rarely if ever used in America—the object of which is to remove a suit in equity from some inferior court to the court of chancery, or some other superior court of equity, on account of some alleged incompetency of the court *a quo*, or some injustice in its proceedings. Story Eq. Pl. (5 edit.) § 298.

BILL OF COMPLAINT.—

§ 1. **In general—parts.**—Under the practice of the Court of Chancery, an ordinary suit is commenced by filing or exhibiting a bill of complaint, which is a document in the form of a petition, addressed in ordinary cases to the chancellor, containing a statement of the plaintiff's case, and concluding with a prayer asking for the relief which he filed the bill to obtain. A bill, therefore, consists of four parts—(1) The "title," giving the description of the court and the names of the plaintiffs and defendants; (2) the "address" to the chancellor; (3) the "statement" or stating part; (4) the "prayer." (For specimens of Bills see Hunter's Suit; Dan. Ch. Pr. 297, and Forms.) The bill is signed by the counsel who has settled it.

§ 2. **Original and amended.**—The bill by which a suit is commenced is called an "original" bill, as opposed to an "amended" bill. See AMENDMENT.

§ 3. **"Bill"—"suit."**—The bill being the first step in a suit, the word "bill" is often used as synonymous with "suit;" and in this sense bills are of three kinds, "original, in the nature of original, and not original."

§ 4. **Original.**—A bill is called original when it relates to matters not already before the court, and either prays relief or is filed for some subsidiary purpose.

§ 5. **For relief.**—Bills praying relief are of infinite variety, according to the right or equity sought to be maintained; bills having special names are "inter-

pleader " and " certiorari bills;" bills *quia timet*, to prevent an anticipated loss or injury; and "bills of peace," to establish a right which might otherwise be made the subject of repeated litigation. These kinds of bills are, however, rare in practice.

§ 6. **Not for relief.**—Bills not praying relief are of two kinds—(1) Bills to perpetuate the testimony of witnesses (*see* PERPETUATION OF TESTIMONY). (2) Bills of discovery (*see* DISCOVERY; Mitf. Pl. 145; Dan. Ch. Pr. 259, 1408; Haynes Eq. 185; Snell Eq. 495), of which the principal parts are the "stating part," containing the statement of facts; the "charging part," alleging that the defendants set up a certain defence, and charging or asserting matter to avoid it (*see* AVOIDANCE); and the "interrogating part," in which the essential statements are repeated in the form of interrogatories (*q. v.*) Mitf. Pl. 42 *et seq.*

§ 7. **English bill.**—Formerly, an ordinary suit in chancery was called a suit by English bill, by way of distinction from suits on the common law side of the court, which were conducted in Norman-French or Latin. Mitf. Pl. 8. *See* CHANCERY.

§ 8. **In the nature of original, and not original.**—Bills in the nature of original bills, and bills not original, include "supplemental bills," filed to supply defects or omissions in original bills; "bills of revivor," to revive abated suits (*see* REVIVOR); and "bills of review," filed to obtain the reversal or alteration of a decree made in a former suit between the same parties. Mitf. Pl. 33 *et seq.*; Dan. Ch. Pr. 1377.

§ 9. **Fishing bill.**—Where a person files a bill claiming relief, but not knowing whether the real facts will support his case and hoping to find out by interrogatories facts on which to found his claim, the bill is called a "fishing bill." *See* ACTION; CHANCERY; INFORMATION; PLEADING; SUIT.

BILL OF CONFORMITY.—A bill in equity filed by a personal representative when he finds the affairs of the decedent so much involved that he cannot safely administer the estate except under the direction of a court of equity. 1 Story Eq. Jur. (3 edit.) § 544.

BILL OF COSTS.—

§ 1. **In American practice.**—A written statement of the items making up the total amount of the costs in an action or judicial proceeding. It is demandable as a matter of right by the unsuccessful party, or party bound to pay costs, and is taxable before an officer (generally the clerk) of the court.

§ 2. **In English practice.**—An account of fees, charges and disbursements, by a solicitor in a legal business. As to costs generally, and their taxation, *see* those titles. It may here be mentioned that the court has jurisdiction under the Attorney's and Solicitor's Act, 1843, to make an order for the delivery by a solicitor of a bill of costs against his client; this is necessary where the solicitor claims a lien on a fund or on papers in his possession, so that they cannot be dealt with until his costs have been paid. (Dan. Ch. Pr. 1728; Archb. Pr. 121.) Also, under the Attorney's and Solicitor's Act, 1870, a solicitor may make an agreement in writing with his client as to his remuneration by a gross sum, percentage, salary or otherwise; such an agreement, however, is liable to be reviewed by a taxing master. Dan. Ch. Pr. 1738.

BILL OF CREDIT.—(1) Paper (promissory notes) issued by the authority of a State, on the faith of the State, and designed to circulate as money. (11 Pet. (U. S.) 257, 313; 1 Kent Com. *408.) The issuing of bills of credit by the States is expressly forbidden in the United States constitution (Art. I. § 10.) (2) A letter of credit (*q. v.*)

BILL OF CREDIT, (what is, within constitutional inhibition). 13 How. (U. S.) 12; 11 Pet. (U. S.) 257, 313; 4 *Id.* 410, 431; 3 Ala. 258; 4 Ark. 44; 35 Ga. 330; 2 Ill. 87; 3 Dana (Ky.) 150; 2 Litt. (Ky.) 300; 21 La. Ann. 751; 5 Sm. & M. (Miss.) 91; 4 Mo. 59, 255; 6 Hill (N. Y.) 33.

BILL OF DEBT.—An ancient term including promissory notes and bonds for the payment of money.—*Bouvier*.

BILL OF DISCOVERY.—A bill in equity filed to obtain a discovery of facts resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power. Story Eq. Pl. (5th edit.) § 311.

BILL OF EXCEPTIONS.—

§ 1. **In American practice.**—A formal statement in writing of the objections interposed and exceptions taken upon the trial of a cause, to the decision of the presiding judge or justice on points of law

arising during the trial, drawn up by a party seeking a review in a higher court, and properly certified by the trial judge. It must recite the proceedings on the trial, the decision or ruling of the judge objected to, and the exception taken. Its object is to furnish a record of the points decided for the purpose of review in an appellate court. In theory, it is supposed to be drawn up and submitted to the judge for his approval during the trial, but in practice the exceptions are merely noted at the time they are interposed, and the bill is drawn up, settled and certified by the judge after the trial. See the statutes of the several States as to this latter point, and other matters of practice relating to the subject.

§ 2. **In English practice.**—Under the former common law practice, if a judge at the trial of an action misdirected the jury on a point of law, or improperly received or rejected evidence, he might be required to seal a bill of exceptions, which was a document containing a statement of the objections taken by the party aggrieved. The bill was then argued before the court of error, and if the objections were held to be well founded there was a trial *de novo*. Bills of exceptions have been abolished. (Archb. Pr. 376; Rules of Court lviii. 1.) The same result is now obtained by a motion for a new trial.

BILL OF EXCEPTIONS, (in criminal cases). 14 Wend. (N. Y.) 554; 15 *Id.* 581.

— (return to court of error). 2 Chit. Gen. Pr. 593.

BILL OF EXCHANGE.—

§ 1. **General principles.**—An unconditional written order from A. to B., directing B. to pay C. (or, to pay to the bearer) a certain sum of money therein named, either on demand or at sight, or at any certain period after date or after sight. (See DAYS OF GRACE.) A. is called the drawer, B. the drawee, and C. the payee; sometimes A., the drawer, is himself the payee. When B., the drawee, has, by accepting the bill, undertaken to pay it, he is called the acceptor. Byles Bills 1, 78; Sm. Merc. L. 203 *et seq.* See ACCEPTANCE.

§ 2. **Negotiability.**—If a bill is made payable to C. without more, it is not transferable. (Byles Bills 82, 147.) Usually, however, a bill is made payable either to "C. or order," or to "C. or bearer." In the former case C. can transfer the bill by a written order to pay to some one else (D.), who then becomes the holder of it, and can transfer it to E., and so on. This

order is generally written on the back of the bill, and is called an indorsement, C. being then the indorser, and D. the indorsee. If the bill is payable to C. or bearer, C. can transfer it to D. by merely delivering it to him. A bill payable to order may be converted into a bill to bearer if the payee or indorsee indorses it in blank. See INDORSEMENT.

§ 3. **Holder** is a general word applied to any one in actual or constructive possession of a bill, and entitled to recover and receive its contents from the parties to it, viz., the acceptor, drawer and indorsers.

§ 4. **Respective liabilities of the parties.**—The legal effect of "drawing" a bill is a conditional contract by the drawer to pay the bill if the drawee dishonors it, either by failing to accept it, or, having accepted it, by failing to pay it at maturity. The effect of "accepting" a bill is an absolute contract by the acceptor to pay the bill. The effect of "indorsing" a bill is a conditional contract by the indorser to pay his immediate or any succeeding indorsee, or the holder, in case of the acceptor's default. (*Id.* 2 *et seq.*) But if the bill is not presented for payment at the proper time, all the antecedent parties, except the acceptor, are discharged from liability, (*Id.* 215,) and the liability of a party may be qualified by the terms of his acceptance or indorsement (see those titles).

§ 5. **Dishonor, and notice thereof**—When the drawee of a bill fails to accept it on its being presented to him for that purpose it is said to be dishonored by non-acceptance; when the acceptor of a bill fails to pay it on presentment at the proper time it is said to be dishonored by non-payment. As a general rule it is incumbent on the holder of a bill which has been dishonored to give prompt notice of the fact to the antecedent parties, otherwise they will be discharged from all liability. *Id.* 269 *et seq.*

§ 6. **Due, and overdue.**—When a bill is made payable at a certain time (*e. g.* thirty days after date or sight), on that time arriving the bill is said to be at maturity or due. After that time it is said to be overdue or afterdue. The negotiability of an overdue bill is qualified. See EQUITY, NEGOTIABLE.

§ 7. **Peculiarities of bills, &c.**—Bills of exchange, promissory notes, and a few other instruments, differ from other simple contracts, (1) in their negotiability (*q. v.*), and (2) in being presumed to have been given or transferred for valuable consideration until the contrary is proved. *Id.* 2, 118.

§ 8. **An accommodation bill** is one to which a person has put his name as acceptor, drawer, or indorser, without consideration, for the purpose of benefiting or accommodating another person who desires to raise money on the bill and is to provide for it when due. (*Id.* 129.) When one person does this in consideration of another doing the same for him, the bills are called "mutual accommodation bills." As between the accommodating and the accommodated parties, of course the ordinary rules of the liability of acceptor, drawer, &c., do not apply, nor do they apply where a person takes an accommodation bill with notice of its character.

§ 9. **Domestic or foreign.**—Bills of exchange are either inland (domestic) or foreign. Inland bills in England, are those which are both drawn and payable within the limits of the British Islands; all others are foreign bills. In America, an inland or domestic bill is one the drawer and drawee of which both reside in the same State or country, and a foreign bill is one the drawer and drawee of which reside either in different countries or in different States of the Union. Foreign bills differ from inland bills principally in being frequently drawn in sets or parts, (Byles Bills 390), and in requiring to be protested on dishonor in order to charge the drawer. *Id.* 255. See **PROTEST**.

§ 10. **Exemplars, or parts** of a bill are separate copies, each part being numbered and referring to the other parts, but all the parts are signed by the drawer and are otherwise identical with one another. All the parts together make a set, and the whole set constitutes but one bill, so that the payment of one part extinguishes all. The object of drawing a bill in parts is to guard against loss and to facilitate negotiation. Byles Bills 385.

§ 11. **Bills of Exchange Act.**—Formerly in England, there was a peculiar mode of suing on bills of exchange provided by the act 18 and

19 Vict. c. 67, under which a person sued on a bill was not allowed to defend the action unless he showed a *prima facie* defence. This principle has now been extended to all actions where the writ is specially indorsed for a liquidated money claim, and the special procedure on bills of exchange has been abolished. (Rules of Court xiv.; Rules of April, 1880.) As to the history of bills of exchange, see Jevons on Money 390.

BILL OF EXCHANGE, (defined). 11 Bush (Ky.) 180; 3 Halst. (N. J.) 262; Sax. (N. J.) 90, 141, 6 Cow. (N. Y.) 108; 70 Pa. St. 474; 10 Humph. (Tenn.) 545.

— (essential qualities of). 31 Ill. 525; 8 B. Mon. (Ky.) 168.

— (requisites of). 4 Port. (Ala.) 205; 2 Blackf. (Ind.) 47; 1 Bibb (Ky.) 490, 503; 3 J. Marsh. (Ky.) 174, 542; 6 *Id.* 170; 4 T. B. Monr. (Ky.) 124; 15 Me. 131; 11 Mass. 143; 3 Halst. (N. J.) 262; 1 Cow. (N. Y.) 691; 1 Ohio 272.

— (what is a). 11 Ohio St. 89.

— (check on bank is). 2 McLean (U. S.) 19; 1 Blackf. (Ind.) 104.

— (distinguished from "check"). 8 N. Y. 190; 5 Ohio St. 13.

— (drawn in one State on persons in another). 15 Wend. (N. Y.) 527.

— (forgery of). 2 Moo. C. C. 295.

— (included in "bond, bills and notes," in a statute). 18 Ohio 54.

— (treated as a promissory note). 2 Wheel. Am. C. L. 195.

— (under a statute requiring a written acceptance). 1 Hill (N. Y.) 583.

— (what considered acceptance of). 3 Kent Com. 109.

— (when an inland bill). 5 Johns. (N. Y.) 375.

BILL OF GROSS ADVENTURE.—A term of the French maritime law, descriptive of an instrument, similar to a bottomry (*q. v.*) or respondentia bond (*q. v.*)

BILL OF HEALTH.—

§ 1. **In commercial law.**—A document given to the master of a ship by the consul of the port from which he comes, describing the sanitary state of the place. "It may be a clean, suspected, or foul bill. The first is given where no disease of an infectious or contagious kind is known to exist; the second where, though no such disease has appeared, there is reason to fear it; and the last, when such a disease actually exists at the time of the ship's departure. The latter subjects the ship to the full period of quarantine" (*q. v.*) Maud. & P. Mer. Sh. 104.

§ 2. **In Scotch law.**—An application by a person in custody of the law, to be discharged therefrom, on account of ill-health.—*Bouvier*.

BILL OF INDEMNITY.—An act of parliament frequently passed in England, for

the relief of officers who have not properly qualified, as by failure to take the oath of office, &c.—*Abbott; Wharton.*

BILL OF INDICTMENT.—*See* BILL, § 3: INDICTMENT.

BILL OF INFORMATION.—A bill in equity, filed by the attorney-general or solicitor-general (1) in behalf of the government, in which case the information needs no relator; (2) in behalf of some one whose rights ought to be protected by the government, who is called the "relator" (*q. v.*), and is considered the real party in interest, and liable for costs, &c., and (3) partly on behalf of such relator and partly in behalf of the government, in which latter case the relator's personal complaint is joined to and incorporated with the information given to the court by the government officer, and the two papers form together what is called "an information and bill." *Story Eq. Pl.* (5th edit.) § 8.

BILL OF INTERPLEADER.—A bill in equity exhibited by a plaintiff, where two or more persons claim the same debt, or duty or other thing from him by different or separate interests, and he, claiming no right in opposition, and not knowing to which of such claimants he ought to respond, and fearing damage, exhibits the bill in order that such claimants may be compelled to interplead, and state their several claims, so that the court may decide to which of them the debt, duty or other thing belongs. (*Story Eq. Pl.* (5th edit.) § 291.) For the requisites of the bill, *see Id.* §§ 291–297.

BILL OF INTERPLEADER, (defined). 35 Mich. 35.

BILL OF LADING.—

§ 1. Where a ship is not chartered wholly to one person, but the owners offer her generally to carry the goods of any merchants who may choose to employ her, or where, if chartered to one merchant, he offers her to several sub-freighters for the conveyance of their goods, she is called a "general ship." In these cases the contract entered into by and with the owners, or the master on their behalf, is evidenced by the bill of lading. This is a document which is signed and delivered by the mas-

ter to the shippers on the goods being shipped: it acknowledges the receipt of the goods for transportation, and contains the agreement to carry and deliver, the terms as to freight, &c. Several parts, that is to say copies, of the bill of lading are commonly made out; one or more of these is sent by the shipper of the goods to the person for whom they are intended (the consignee), one is retained by the shipper himself, and another is kept by the master for his own guidance. *Maud. & P. Mer. Sh.* 255; *Sm. Merc. L.* 302.

§ 2. **Contents.**—A bill of lading specifies the name of the master, the port and destination of the ship, the goods, the consignee, and the rate of freight.

§ 3. **Qualities.**—A bill of lading is a negotiable instrument, and the property in the goods which it represents is transferred by its indorsement and delivery, subject to any rights of stoppage *in transitu*, liability to freight, &c. (*Fuentes v. Mentis*, L. R. 3 C. P. at p. 276.) As to the rights of the holder of one part of a bill of lading drawn in a set, *see Glyn, Mills & Co. v. East and West India Dock Co.*, 5 Q. B. D. 129. *See* AFFREIGHTMENT.

§ 4. **Carriers by land** give similar receipts, which are styled "bills of lading," "domestic bills of lading," "freight bills," "express receipts," &c., and confer upon the shipper similar rights and remedies, except that in many instances they are not negotiable, and contain limitations of the carriers common law liability. *See* COMMON CARRIER.

BILL OF LADING, (defined). 5 Ala. 430; 34 Me. 554; 12 Barb. (N. Y.) 310; 4 Den. (N. Y.) 323; 14 Wend. (N. Y.) 28; 4 Ohio 334; 6 Wheel. Am. C. L. 364; 1 H. Bl. 359.

—— (operation of). *Abb. Adm.* 196; *Crabbe* (U. S.) 534.

—— (what is not). 1 Lans. (N. Y.) 207.

—— (consignor may stop goods). 2 T. R. 63.
—— (transferable and negotiable by custom). 5 T. R. 683.

BILL OF MIDDLESEX.—An old form of process similar to a *capias*, issued out of the Court of King's Bench in personal actions, directed to the sheriff of the county of Middlesex, (hence the name) and commanding him to take the defendant and have him before the king at Westminster on a day named, to answer the plaintiff's complaint.—*Burrill.*

BILL OF MORTALITY.—A return of deaths in London before the present system of

registration was instituted. (*See* REGISTRATION, Subd. *Births, Deaths and Marriages*.) The returns covered the greater part of the district now known as the Metropolis.

BILL OF PAINS AND PENALTIES.—A special legislative act providing for the punishment (other than capitally, in which respect it differs from a bill of attainder,) of persons suspected to be guilty of great crimes like treason, without a previous conviction in a court of justice. The prohibition in the United States constitution against the passage of bills of attainder (Art. I. § 9,) would seem to likewise prohibit bills of pains and penalties.

BILL OF PAINS AND PENALTIES, (distinguished from "bill of attainder"). 35 Ga. 235.

BILL OF PARCELS.—An invoice, or detailed statement of the names of the items composing a parcel of goods, and their prices, sent with the goods to the buyer, in order that he may detect any mistake in quantity or price that may have been made.

BILL OF PARTICULARS.—A written statement of the particulars (the items) of the demand upon which the plaintiff founds his action, or the defendant his set-off or counterclaim. It should give dates, amounts and items in detail, and should be full enough to give the opposite party information of all matters as to which he is entitled to be informed, and to prevent surprise. In some jurisdictions it must be filed along with the pleading of the party, in others only on request of the opposite party, or in response to an order of the court. When furnished the bill is generally conclusive on the party furnishing it.

BILL OF PARTICULARS, (defined). 17 Wend. (N. Y.) 20.

—— (what constitutes). 1 Hill (N. Y.) 214.
 —— (what is not). 41 Conn. 140.
 —— (effect of). 17 Wend. (N. Y.) 20.

BILL OF PEACE.—Where the same question has been frequently litigated in the same manner (as where repeated actions of ejectment have been brought for the same land), or where it is likely to be contested in a multiplicity of suits, a bill may be filed in chancery to restrain the

vexatious or unnecessary litigation by perpetual injunction; this is called a "bill of peace." Dan. Ch. Pr. 1532.*

BILL OF PRIVILEGE.—In old English law, a method of proceeding against attorneys and officers of the court not liable to arrest. 3 Bl. Com. 289.

BILL OF PROOF.—In England, in a proceeding by foreign attachment, it is a rule that the garnishee cannot raise the defendant's want of title as a defence to the attachment, and therefore he cannot show that the property to be attached really belongs to a third person: the real owner, however, is permitted to do this by what is called a "bill of proof," which is a claim by him to be admitted to prove that the property is his; thus, if the defendant delivered to the garnishee goods belonging to A., and the plaintiff issues an attachment against them, A. must file a bill of proof in order to show his right to the goods; having filed his bill, he is called the "approver." The plaintiff appears to the bill of proof, and the approver delivers the proba- tion, which is in the nature of a declaration, and sets forth the approver's title; the plaintiff then pleads and the issue is tried as in ordinary cases, the approver being in the position of real plaintiff. Brand. For. Att. 128.

BILL OF REVIEW—BILL OF REVIVOR.—*See* BILL OF COMPLAINT, § 8.

BILL OF REVIEW, (requisites of). 17 How. (U. S.) 468; 1 Root (Conn.) 578.

BILL OF REVIVOR AND SUPPLEMENT.—A bill in equity which in effect is a compound of a supplemental bill (*q. v.*) and a bill of revivor. *See* REVIVOR.

BILL OF REVIVOR AND SUPPLEMENT, (when it lies, requisites, &c.) 2 Ala. 406.

BILL OF RIGHTS.—A formal and public declaration in writing of popular rights and liberties, usually incorporated in some statute or constitutional provision, or promulgated upon the formation of a new form of constitutional government. The original English bill of rights was the Stat. 1 W. & M. st. 2, c. 2. A number of the American States have bills of rights incorporated into their constitutions.

BILL OF SALE.—A deed assigning personal property.

* Now there cannot be an injunction by one branch of the English High Court to restrain proceedings in another; provision is, however, made for staying proceedings, or for transferring them to the division in which other proceedings

are pending. Moreover, any matter of equity on which an injunction might have been obtained before the Judicature Act, may now be relied on as a defence. Jud. Act, 1873, § 24.

§ 1. **Bill of sale by way of assignment.**—A bill of sale of ordinary chattels by way of absolute assignment is not very common in England, except in cases where the thing sold is of some importance, as where a sheriff sells goods under an execution. (Sm. Merc. L. 484.) Such bills, however, are in more frequent use in America.

§ 2. **Bill of sale of ship.**—A bill of sale is the usual (The Sisters, 5 Rob. 159; Maud. & P. Mer. Sh. 22), and in the case of registered ships, the only mode of transferring ships; a bill of sale of a registered ship, under the English Merchant Shipping Act, 1854 (§ 55), is in the form given in the act, specifying the number and date of registry, the description of the ship, &c.; it is under seal and must be registered. (Maud. & P. 22-25; Sm. Merc. L. 188.) By the act of congress passed January 14th, 1793, a similar requirement is made as to transfers of registered ships to citizens of the United States. U. S. Rev. Stat. § 4170.

§ 3. **Grand, and ordinary bill.**—Formerly bills of sale were divided into two kinds—the grand bill of sale, which conveyed the ship from the builder to the purchaser or first owner, and the ordinary bill of sale, by which any subsequent transfer was made; but these terms are not now used in England, and the distinction has never been recognized in the United States. Sm. Merc. L. 484.

§ 4. **Bill of sale by way of mortgage.**—The most usual kind of bill of sale in England, and that to which the term is in practice applied, is a bill of sale of chattels (*e. g.* furniture, horses, stock-in-trade, &c.) by way of mortgage to secure a debt, being an assignment with a covenant for reconveyance on payment of the debt, similar in most respects to a mortgage of land. In the United States such an instrument is generally termed a "chattel mortgage."* See CHATTEL MORTGAGE; MORTGAGE.

*It is with reference to these instruments that the Bills of Sale Acts (Bills of Sale Act, 1878, repealing the former statutes, 17 and 18 Vict. c. 36, and 29 and 30 Vict. c. 96) are of importance; they were passed to prevent frauds "committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property" which really belongs to some one else. The Bills of Sale Act, 1878, provides in effect that unless a bill of sale, to-

BILL OF SALE, (possession must accompany). 15 Wend. (N. Y.) 246.

BILL OF SCANDAL, (in a verdict). 2 Binn. (Pa.) 516.

BILL OF SIGHT.—Under the English statute (3 and 4 Wm. IV. c. 52, § 24), when a merchant is ignorant of the real quantities or qualities of any goods assigned to him, so that he is unable to make a perfect entry of them, he must acquaint the collector or comptroller of the circumstance; and he is authorized, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by bill of sight for the packages, by the best description which can be given, and to grant warrant that the same may be landed and examined by the importer in presence of the officers; and within three days after any goods shall have been so landed, the importer shall make a perfect entry, and shall either pay down the duties or shall duly warehouse the same.—*Wharton*.

BILL OF STORE.—In English law, a kind of license granted at the custom house to merchants, to carry such stores and provisions as are necessary for their voyage, custom free.—*Jacob*.

BILL OF SUFFERANCE.—A license granted to a merchant, to suffer him to trade from one English port to another, without paying custom. (Stat. 14 Car. II. c. 11.)—*Jacob*.

BILL, ORIGINAL.—See BILL OF COMPLAINT, § 4.

BILL PAYABLE.—In mercantile law, where a merchant has accepted a bill of exchange or made a promissory note, such bill or note is called a "bill payable," because of his liability to pay it when it comes due. Such bills are usually entered in a book called "bills payable," and there is also an account kept in the ledger under that name.

BILL PENAL.—A written obligation in which the obligor acknowledges his indebtedness in a sum named, and binds himself for its payment in a larger sum or penalty. A similar instrument to the "bill single" (*q. v.*), except that the latter expresses no penalty. Bills penal have been superseded in modern times by the ordinary penal bond. See BOND.

gether with an affidavit verifying its execution, is filed in the Central Office of the Supreme Court (Judicature (Officers) Act, 1879, § 4; Rules of Court, LXA. December, 1879, and April, 1880) within seven days from its execution, it shall be void against the trustee in bankruptcy or liquidation of the grantor, against his assignees for the benefit of his creditors, and against his execution creditors, so far as regards any of the goods which remain in his actual or apparent possession. See Pope B. of S.

B. *act*, PLAINT OR INFORMATION, (in a statute). 5 Rawle (Pa.) 129.

BILL QUIA TIMET.—A bill in equity filed by one who has reason to apprehend some injury or inconvenience to his property rights and interests, likely to be brought about by the negligence or fault of another. In the English practice, the remedy seems to be confined to cases of rights to property of a personal nature; in the United States, real property rights also may sometimes be protected by bills *quia timet*.

BILL RECEIVABLE.—Commercial paper payable at a future time held by a merchant. Such paper is so called because the proceeds thereof are receivable by the merchant holding the paper, and an account of it is kept in a book called "bills receivable" and also in the ledger under the same title.

BILL RENDERED.—A bill of items rendered by a creditor to his debtor; an "account rendered," as distinguished from "an account stated." See ACCOUNT, §§ 1, 3.

BILL SINGLE.—An unconditional, written engagement to pay to another or others named in the instrument, a specified sum at a stated time. When under seal, as is usually the case, it is sometimes called a "bill obligatory" (*q. v.*) It differs from a "bill penal" (*q. v.*) in that it expresses no penalty. Bills single have been for a long time in use in some of the Southern States, and in Pennsylvania.

BILL TO PERPETUATE TESTIMONY.—A bill in equity filed in order to procure the testimony of witnesses to be taken as to some matter not at the time before the courts, but which is likely at some future time to be in litigation. Its object is to preserve evidence in order to prevent future litigation. Story Eq. Pl. (5 edit.) § 300 *et seq.*

BILLA CASSETUR.—See QUOD BILLA CASSETUR.

BILLA EXCAMBIL.—A bill of exchange.

BILLA EXONERATIONIS.—A bill of lading.

BILLA VERA.—A true bill. The old form of indorsement made by the grand jury on

an indictment considered by them to be probably true. The translation given above is now indorsed upon the indictment in such cases.

BILLET DE CHANGE.—In French law, an engagement to give, at a future time, a bill of exchange, which the party is not at the time prepared to give. Story Bills, § 2 *n.*

BILLS, (in a promissory note). 4 Mass. 252. — (note payable in). 2 Wheel. Am. C. L. 179, 187, 190.

— (payment by). 6 T. R. 139, 142.

BILLS, GOOD AND SAFE, (in award). Coxe (N. J.) 84.

BI-METALLIC.—Pertaining to, or consisting of, two metals used as money at a fixed relative value.—*Webster*, (*Supp.*)

BI-METALLISM.—The legalized use of two metals in the currency of a country at a fixed relative value.—*Webster*, (*Supp.*)

BIND MYSELF, I, (in a covenant). Hardr. 178.

— (in promise to pay the debt of another). 7 Pet. (U. S.) 113.

BIND OURSELVES AND EACH OF US, (in a covenant). 7 Mod. 153; *see also* Dyer 114.

BIND OURSELVES AND EACH OF US FOR THE WHOLE AND ENTIRE SUM OF \$1000 EACH, (bond several, and not joint). 3 Dowl. & Ry. 112.

BINDING OUT.—The act of making a minor an apprentice; the contract of apprenticeship (*q. v.*) See 1 Wheel. Am. C. L. 407.

BINDING OVER.—The holding to bail, by a court or magistrate, of one accused of crime; also the requirement of security from one complained against to be of good behavior, or to keep the peace. Witnesses may also, in some cases, be bound over to appear and testify. See RECOGNIZANCE.

BIPARTITE.—Of two parts. A term in conveyancing law descriptive of an instrument in two parts and executed by two parties.

BIRRETUM, or BIRRETUS.—An old law term for the cap or coif of a judge or serjeant-at-law.—*Spel. Gloss.*

BIRTH.—See ABORTION; CONCEALMENT OF BIRTH; REGISTRATION, Subd. *Births*, *Deaths and Marriages*.

Bis dat qui cito dat: He gives twice who gives quickly.

Bis idem exigi bona fides non patitur; et in satisfactionibus, non per-

mittitur amplius fieri quam semel factum est: (9 Co. 53.)—Good faith does not suffer the same thing to be exacted twice, and in giving damages, it is not allowed to give more than is given at once.

BISAILE.—See **BESAILE**.

BISANTIUM, BESANTINE, or BEZANT.—An ancient coin, first issued at Constantinople; it was of two sorts—gold, \approx nivalent to a ducat, valued at 9s. 6d., and silver, computed at 2s. Both were current in England.—*Wharton*.

BISHOP.—An English ecclesiastical dignitary, being the chief of the clergy within his diocese, subject to the archbishop of the province in which his diocese is situated; most of the bishops are also members of the House of Lords. Every bishop is elected by the dean and chapter of the bishopric on the nomination of the crown, the election being a mere form. (Phill. Ecc. L. 41.) The principal powers and duties of a bishop consist in ordaining priests and deacons, licensing curates, consecrating churches and visiting the clergy in his diocese. (See **VISITATION**.) He is an ecclesiastical judge, but his principal jurisdiction is exercised by his chancellor (*q. v.*) (2 Steph. Com. 671.) He also has certain duties under the Church Discipline Act and the Regulation of Worship Act, 1874.

§ 2. **Suffragan.**—The term "suffragan bishop" (*suffragari*, to help) appears to have two meanings: (1) A bishop consecrated to supply the place of the bishop of a see, when absent therefrom; the duties of the suffragan being confined to conferring of orders, confirming, &c. The Stat. 26 Hen. VIII. c. 14, created certain sees of suffragan bishops, and made provision for their appointment. (2) In a less proper sense, all the provincial bishops, with respect to the archbishop, are sometimes called his "suffragans." Phill. Ecc. L. 96. See **DEAN AND CHAPTER**; **ECCLESIASTICAL COURTS**; **ORDINARY**.

§ 3. **In American law**, the bishop is not recognized as an officer having authority derived from law, but only such as the denomination of christians to which he belongs may confer upon him by consent or custom.

BISHOPRIC.—A see, or diocese. The territory over which the jurisdiction of a bishop extends.

BISSEXTILE.—Leap-year, so called because the sixth day before the calends of March is twice reckoned, viz.: on the 24th and 25th of February; so that the bissextile year has one day more than the others, and happens every fourth year. This intercalation of a day was first invented by Julius Cæsar, to make the year agree with the course of the sun. And to prevent all doubt and ambiguity that might arise thereupon, it is enacted by the statute *De anno Bissextili*, 21 Hen. III., that the day increasing in the leap-year, and the day next before, shall

be accounted but one day. (Brit. 209; Dyer 17.)—*Jacob*. In modern usage a twenty-ninth day is added to the month of February once in four years, but the statute above referred to has been adopted and re-enacted in some of the States, leading to some confusion and perplexity in the computation of time, within which to answer process, serve papers, pay bills and notes, &c., when the 29th of February is involved. In such cases, where the statute is in force, that day should not be counted in computing the time.

BLACK, (in school law). 9 Ohio St. 406.

— (includes a Mongolian). 4 Cal. 399.

BLACK ACRE.—A phrase used in the old books along with "white acre" for the mere purpose of distinguishing different parcels or pieces of land one from the other.

BLACK ACT.—The Stat. 9 Geo. I. c. 22, passed for the punishment of persons who committed acts of devastation in Epping Forest, with blackened faces, and otherwise disguised. It was repealed by Stat. 7 and 8 Geo. IV. c. 27.

BLACK ACTS.—Old Scotch statutes passed in the reigns of the James's and down to the year 1586 or 1587, so called because printed in black letter.—*Bell*; *Wharton*.

BLACK BOOK.—

§ 1. **Of the admiralty.**—A book of the highest authority in admiralty matters, generally supposed to have been compiled during the reign of Edward III. with additions of a later date. It contains the laws of Oleron, a view of crimes and offences cognizable in the admiralty, and many other matters. See 2 Gall. (U. S.) 404.

§ 2. **Of the exchequer.**—An ancient book kept in the English exchequer, containing a collection of charters, conventions, treaties, and other matters; similar in character to the "red book of the exchequer" (*q. v.*)—*Burrill*.

BLACK CAP.—It is a vulgar error that the head dress worn by the judge in pronouncing the sentence of death is assumed as an emblem of the sentence. It is part of the judicial full dress, and is worn by the judges on occasions of especial state.—*Wharton*.

BLACKMAIL.—**FRENCH:** *maïlle*, a link of mail, or small piece of metal or money.

§ 1. **Old meaning.**—Blackmail signifies in the north of England, in the counties of Cumberland, Northumberland, &c., a certain rent of money, corn, or other thing, anciently paid to persons inhabiting upon or near the borders, being men of name and power allied with certain robbers within the said counties, to be freed and protected from the devastations of those robbers. These robbers were called "moss-troopers," and several statutes have been made against them. The Stat. 9 Ed. III. c. 4 mentions "black money," and "black rents" are the same with "black-mail," being rents formerly paid in provisions and flesh.—*Jacob*.

§ 2. **Modern meaning.**—The modern signification of blackmail, is extortion of

hush-money; obtaining value from a person as a condition of refraining from making an accusation against him, or disclosing some secret calculated to operate to his prejudice.

BLACKMAIL, (synonymous with "extortion"). 26 How. (N. Y.) Pr. 426; S. C. 17 Abb. Pr. 221; 2 Robt. (N. Y.) 29.

BLACKMAILING, (distinguished from "extortion"). 3 Robt. (N. Y.) 284, 291.

BLACK MARIA.—The closed van in which prisoners are carried to and from the jail, or between the court and the jail.

BLACK RENTS.—See **BLACKMAIL**, § 1.

BLACK WARD.—A sub-vassal, who held ward of the king's vassal.

BLACKSTONE.—William Blackstone was born on the 10th July, 1723, educated at the Charterhouse and Oxford, called to the bar in 1746, elected to the Viner professorship in 1758, and appointed solicitor-general to the queen in 1763. In 1765 he published his lectures in the form of "Commentaries on the Laws of England." In 1768 he entered parliament, and in 1770 was made a judge of the King's Bench; shortly afterwards he was removed into the Common Pleas. He died on the 14th February, 1780. In addition to his famous Commentaries, he was the author of an Analysis of the Laws of England, of a work on the Charters, of some law tracts, and of several volumes of reports.—*Foss Biog. Dict.*

BLADA.—In old English law, growing crops of grain of any kind.—*Spel. Gloss.* All manner of annual grain.—*Cowel.* Harvested grain.—*Bract.* 217 b; *Reg. Orig.* 94 b, 95.

BLANC-BLANCUS.—In old English law, a "blanc" was a small silver coin; it also signified money paid by weight: "blancus" was a piece of silver money worn smooth.—*Spel. Gloss.*

BLANCH FERME.—White rent, rent payable in silver, as distinguished from "black rent" (*q. v.*)

BLANCH HOLDING.—A tenure in Scotch law, in which the vassal paid a slight duty to his lord, as a pepper corn, a pair of spurs, or the like; sometimes, however, a greater value was paid. The same as the English "blanch ferme" (*q. v.*) 2 Sharsw. Bl. 42. See **BLENC**.

BLANK.—(1) A space left unfilled in a written or printed instrument, to be

filled up at a future time. (2) A printed form of a deed or other instrument containing "blanks" (in the sense above stated) for names, dates, descriptions, amounts, &c., the printed matter being intended to save the time, which, without it, would necessarily be consumed in engrossing the entire instrument.

BLANK, (appeal bond executed in). 6 Cow. (N. Y.) 59.

—— (bill of exchange drawn in). 2 Mau. & Sel. 90.

—— (bond executed in). 2 Mart. (La.) N. S. 517; 8 Cow. (N. Y.) 118; 17 Serg. & R. (Pa.) 438.

—— (filling after execution). Anstr. 229; 5 Bing. 7, 368.

—— (in bond, effect of). 1 Stark. 304.

—— (in deed, effect of). 2 Moo. & P. 12.

—— (in insurance policy). 24 Wend. (N. Y.) 276.

—— (in promissory note, effect of). 10 Wend. (N. Y.) 93; 10 Serg. & R. (Pa.) 170.

—— (indorsement in, defined). 2 Hill (N. Y.) 80.

—— (indorsement in, effect of). 1 Root (Conn.) 267-8; 2 *Id.* 325; 7 La. 337; 4 Mart. (La.) 639; 8 Mart. (La.) N. S. 507; 11 Johns. (N. Y.) 52; 14 Wend. (N. Y.) 580; 4 Watts (Pa.) 448; 2 Wheel. Am. C. L. 259, 266.

—— (indorsement of note in). 2 Hill (N. Y.) 663; 8 Wend. (N. Y.) 421.

—— (omission of word "calendar" in record, no variance). 3 Brod. & B. 186.

—— (may be supplied in pleadings). 8 Barn. & C. 568.

—— (policy of insurance executed in). 8 Wend. (N. Y.) 144.

BLANK ACCEPTANCE.—An acceptance written on the paper before the bill is made, and delivered by the acceptor. In England, it will charge the acceptor to the extent warranted by the stamp.

BLANK DEPUTATION, (to execute *capias*). 2 Wheel. Am. C. L. 511.

—— (held to be illegal). 6 T. R. 122.

BLANK BAR, also called the "common bar." The name of a plea in bar which in an action of trespass is put in to oblige the plaintiff to assign the certain place where the trespass was committed. It was most in practice in the common bench. (2 Cro. 594.)—*Jacob.*

BLANK BONDS.—Scotch securities, in which the creditor's name was left blank, and which passed by mere delivery, the bearer being at liberty to put in his name and sue for payment. Declared void by the Act of 1696, c. 25.

BLANK INDORSEMENT.—An indorsement on the back of a bill or note which does not name any indorsee, in which case the instrument passes by de-

livery merely, and any subsequent holder may write in his name as indorsee. *See* INDORSEMENT.

BLANK INDORSEMENT, (innocent indorsee can recover against drawer). Doug. 612, 633.

BLANK TRANSFER, (of stock). 22 Wend. (N. Y.) 348.

BLANKS, (clerical mistake may be amended). Doug. 114, 135.

—— (filled in mortgage at time of execution, held to be good). 4 Barn. & Ald. 672.

BLASARIUS.—An incendiary.—*Blount*.

BLASPHEMY.—

§ 1. In American law, blasphemy is the offence of wantonly reviling or casting reproach upon God, or Jesus Christ, or the christian religion; wantonly denying the existence of God, or the truth of the Scriptures, or the divine origin and miraculous birth of the Saviour, with intent to lessen the reverence of mankind for the Deity and the christian religion. The theory under which this offence is punishable is that the christian religion is a part of the law of the land, and to profanely scoff at it, or to revile and cast reproach upon its Author is an offence against the law. But the same words may be blasphemous in one case and not in another; thus, if uttered maliciously with intent to excite feeling of contempt and hatred for God and religion, and if they are in themselves calculated to have that effect, they would be blasphemous. On the other hand, if spoken without malice, in the course of serious argument, with intent only to make known and recommend the speaker's real opinions, they would not, in most of the States, be held to be blasphemous. *See* 20 Pick. (Mass.) 213, 244.

§ 2. In English law, blasphemy is the offence of speaking matter relating to God, Jesus Christ, the Bible or the Book of Common Prayer, intended to wound the feelings of mankind or to excite contempt and hatred against the Church by law established, or to promote immorality. According to some opinions it is also blasphemy to speak words denying the truth of christianity in general, or the existence of God, even if spoken decently and in good faith.

§ 3. **Blasphemous libel**.—It is also a misdemeanor to publish a blasphemous

libel, *i. e.* a document containing blasphemous matter. Steph. Cr. Dig. 97; Shortt Copyr. 301. *See* APOSTASY; HERESY.

BLASPHEMY, (defined). 20 Pick. (Mass.) 211, 212; 8 Johns. (N. Y.) 290; 3 Meriv. 379 *n.*

—— (what amounts to). 2 Harr. (Del.) 553.

BLENCH.—A sort of tenure of land; as to hold land in blench, is by payment of a sugar-loaf, a couple of capons, a hat, &c., if the same be demanded in the name of blench, *i. e. nomine albæ firmæ*.—*Jacob*.

BLENDED FUND.—

§ 1. **Conversion**.—In England, where a testator directs his real and personal estate to be sold, and disposes of the proceeds as forming one aggregate, this is called a "blended fund." The expression is chiefly used in cases where part of the testator's disposition fails, by lapse or otherwise, so that it becomes a question, whether so much of the undisposed of portion as consists of or arises from land goes to the testator's heir-at-law or next of kin. The leading case on this point is *Ackroyd v. Smithson*, (1 Bro. Ch. C 503; 1 White & T. Lead. Cas. 783; *Jessopp v. Watson*, 1 Myl. & K. 665), where the testator ordered his real and personal estate to be sold, and gave the proceeds to several legatees, some of whom died during the lifetime of the testator, so that their shares lapsed: it was held that so much of their shares as consisted of personal estate went to the testator's next of kin, and so much as consisted of the proceeds of real estate, went to the testator's heir-at-law, although the real estate had been sold. The rule is a branch of the doctrine of conversion (*q. v.*) *See* EQUITABLE CONVERSION; LAPSE.

§ 2. **Charitable legacies**.—Where charitable legacies are made payable out of a fund consisting partly of personal property and partly of the proceeds of realty, the funds are generally distinguished as pure and impure personalty. *See* ABATEMENT, § 4; PERSONALTY.

BLINKS.—In old English law, boughs broken down from trees and thrown in a way where deer are likely to pass.—*Jacob*.

BLOCK, (in mining properties). 100 Mass. 435.

BLOCK, TENEMENT, (in policy of insurance). 124 Mass. 129.

BLOCKADE.—In international law, blockade is where two powers are at war, and one maintains such a naval force near the shore or ports of the other as to prevent access to them, or, as it is sometimes put, the vessels must be so disposed that there is an evident danger in entering the port or approaching the shore, notwithstanding that the blockading squadron may be accidentally absent for a time, *e. g.* from being blown off by the wind.

§ 2. **De facto.**—A blockade *de facto* is where the blockade has not been notified (as is usually done) by the belligerent to neutral governments, so that every approaching vessel has to be warned off by the squadron. Vessels attempting to pass a blockade are liable to confiscation (*q. v.*) *Man. Int. Law*, 400 *et seq.*

BLOCKADE, (what is a lawful). 3 Ware (U. S.) 276; 7 Johns. (N. Y.) 38.

BLOOD.—

§ 1. In law, blood is (1) that quality or relationship which enables a person to take by descent, sometimes called in the old books "blood inheritable" (*Co. Litt.* 12a); and (2) a number of persons connected by blood relationship, *i. e.* by being descended from one or more common ancestors.

§ 2. **Whole and half blood.**—Blood is of two kinds—the whole blood and the half blood. One person is said to be of the whole blood to another when they are both descended from the same pair of ancestors, *e. g.* two brothers who have the same father and mother. (*Id.* 14a.) Two persons are said to be of the half blood to one another when they are descended from one common ancestor only, *e. g.* two brothers who have the same father, but different mothers. (*Litt.* § 6.) Formerly, in England, relations by the half blood were incapable of inheriting from one another, but now they are admitted in the table of descent after the relation of the whole blood of the same degree and his issue where the common ancestor is a male, and next after the common ancestor when the common ancestor is a female. (*Inheritance Act*, § 9; *Wms. Real Prop.* 109. For an explanation of the latter part of the rule, *see* 1 Bythew. *Conv.* (Sweet) 146 *n.* (a). The common law rule excluding as heirs persons of the half blood was never adopted to any great extent in America, though many of the States still make some distinctions between persons of the whole and half blood. In the distribution of the personal estate of an intestate, there is no difference between the half blood and the whole blood. *Wms. Pers. Prop.* 405.

BLOOD, (deed in consideration of). 2 Hill (N. Y.) 659.

BLOOD, (in a will). 15 Ves. 107.
—— (in statute of descent). 2 Pet. (U. S.) 58.

BLOOD-MONEY.—(1) Money paid to the relatives of one killed by another. (2) Money paid as a reward for the conviction of one charged with a capital offence.

BLOOD, NEAREST OF, (synonymous with "next of kin"). 13 Sim. 290.

—— (to whom land descends). *Dyer* 333 b; 15 Ves. 108.

BLOOD, OF THE, (ancestor). 3 Halst. (N. J.) 346.

—— (royal). 2 Bl. Com. 202, 207.

—— (in statute of descent). 2 Pet. (U. S.) 58, 86.

—— (not equivalent to "heir"). 3 Halst. (N. J.) 346.

—— (to whom warranty descends). *Co. Litt.* 12a.

BLOOD, OF THE WHOLE, (brothers and sisters are). 5 Whart. (Pa.) 477.

BLOOD OR MARRIAGE, (relations by). 5 Ves. 529.

BLOODWIT, or BLODWIT.—Often used in ancient charters of liberties for an amercement for bloodshed; and according to some writers, it was a customary fine paid as a composition and atonement for shedding or drawing of blood, for which the place was answerable, if the party were not discovered; and therefore a privilege or exemption from this fine or penalty was granted by the king, or supreme lord, as a special favor.—*Jacob.*

BLOODY-HAND.—One of the four kinds of circumstances by which an offender was supposed to have killed deer in the king's forest. In Scotland, in such like crimes, the term was "taken in the fact," or with the "red-hand." *See* BACBERIND.

BLOUNT.—Thomas Blount was born at Bordesley, in Worcestershire, about 1619, and was called to the bar at one of the Temples. He died 26th December, 1679. His principal legal works are (1) the *Νομολεξικον*, or Law Dictionary, "interpreting such difficult and obscure words and terms as are found either in our common or statute, ancient or modern laws" (London, 1671, fol.; reprinted with corrections and additions, 1691.) (2) *Fragmenta Antiquitatis*, Ancient Tenures of Land and Jocular Customs of some Manors, &c., (London, 1679, 8vo.; edited by Beckwith, 1784; re-edited, 1815; and, lastly, by W. C. Hazlitt, 1874, but this last is not properly an "edition," for the whole matter is re-arranged on Mr. Hazlitt's own plan.) *See* 2 Wood's Ath. Ox. col. 73.

BLOW WITH. (in the devise of a furnace and mill). 110 Mass. 449.

BLUBBER. (in policy of insurance, as catchings). 1 Story (U. S.) 603.

BLUDGEON. (offensive weapon within statute). 1 Leach C. C. 342 n.

BLUE LAWS.—(1) A name applied to certain laws of extreme rigor, supposed to have been anciently in force in Connecticut. (2) Rigorous puritanical laws.

BOARD.—A constituted body of commissioners, directors, or trustees, either of a private or municipal corporation, or of a State, organized to perform official or representative functions, or to execute some trust. See the titles given below; also ALDERMEN; CORPORATIONS; DIRECTORS; SUPERVISORS; TRUSTEES.

BOARD, (defined). 2 Miles (Pa.) 323.

—— (of prisoners). 58 Ind. 260.

—— (to receive food without lodging). 36 Iowa 651.

BOARD AND LODGING, (in a plea of set-off). 10 Mass. 224, 229.

BOARD OF HEALTH.—Under the Stats. 11 and 12 Vict. c. 63 (Public Health Act, 1848); 21 and 22 Vict. c. 98 (Local Government Act, 1858), and other acts amending the same, local boards are constituted for the better securing the public health, and who for that purpose exercise certain powers as to sewers, drains, buildings, slaughter-houses, &c. Similar boards are also provided for by the charters of the principal cities in the United States.

BOARD OF SUPERVISORS.—A board of county officers, having charge of the finances of the county, and composed of persons chosen by and representing the several towns or townships of the county. The board is so called in Illinois, Iowa, Michigan, New York, and some other States; in others a similar board is that of the "county commissioners" (*q. v.*), and in New Jersey, the board of "chosen freeholders" (*q. v.*)

BOARD OF TRADE.—A committee of the English privy council which is appointed for the consideration of matters relating to trade and foreign plantations. (Merchant Shipping Act, 1854, § 2.) It has the general superintendence of matters relating to merchant ships and seamen (*Id.* § 6,) including the power of stopping unseaworthy ships, (M. S. Act, 1876,) and of instituting inquiries and investigations into shipping casualties, (*Id.*; M. S. Act, 1854, § 507),

of matters relating to railways (especially as regards the inspection and control of railways before and after their opening for traffic, the sanctioning of by-laws, and the investigation of accidents), (Hodg. Railw. 410 *et seq.*) of matters relating to the registration of joint-stock companies, (Companies Act, 1862, § 174), designs, (2 Steph. Com. 462), &c., &c.

BOARD OF WORKS.—The name of a board of officers appointed for the better local management of the English metropolis. They have the care and management of all grounds and gardens dedicated to the use of the inhabitants in the metropolis; also, the superintendence of the drainage; also, the regulation of the street traffic, and, generally, of the buildings of the metropolis.—*Brown.*

BOARDER.—One who being an inhabitant of the place, obtains food and lodging in the house of another for a stipulated price, under a special contract of a more or less permanent character.

BOARDER, (defined). 36 Iowa 651; 7 Robt. (N. Y.) 561.

—— (distinguished from "guest"). 26 Ala. 371; 7 Cush. (Mass.) 417; 26 Vt. 316, 343.

BOARDING-HOUSE.—A quasi-public house where boarders are generally and habitually kept, and which is held out and known as a place of entertainment of that kind. (1 Lans. (N. Y.) 486.) The keeper of such a house is bound to take ordinary care of the goods of his guests therein, and will be liable for negligence occasioning loss (2 El. & B. 144); but his liability is not so extreme as that of an innkeeper. (8 W. R. 438.) A contract for board and lodging is not a contract regarding land within the meaning of the Statute of Frauds. 8 W. R. 413.

BOARDING-HOUSE, (defined). 3 Harr. (N. J.) 484; 1 Lans. (N. Y.) 486.

—— (distinguished from "inn"). 2 E. D. Smith (N. Y.) 148; 2 El. & B. 144.

—— (in a lease). 103 Mass. 374.

BOARDING-HOUSE KEEPER, (in statute giving lien). 24 How. (N. Y.) Pr. 62.

BOAT, (not a "ship or vessel," as those words are used in legislation). 5 Mas. (U. S.) 120, 137; 5 Hill (N. Y.) 34.

—— (under bum-boat act). 1 Brod. & B. 432.

—— (under lien act). 6 Greg. 297.

—— (will not pass on sale of a ship and her appurtenances). 2 Root (Conn.) 71.

BOATS, (covered by insurance on "ship"). 24 Pick. (Mass.) 172.

BOC.—The Saxon word for a book, or writing.

BOC HORDE.—A place where books, writings or evidences were kept.—*Cowel*.

BOC LAND.—An inheritance or possession held by the evidence of written instruments. It was one of the titles by which the English Saxons held their lands, and being always in writing, was hence called "boc land," which signifies *terram codicillariam*, or *librariam*, deed land or charter land. It was the same as *allodium*, being descendible according to the common course of nature and nations, and devisable by will. This species of inheritance was usually possessed by the thanes or nobles. (Spel. Feuds.)—*Brown*.

BODILY HEIRS, (in a will). 1 Bush (Ky.) 279.

BODY.—(1) A person; either the physical person of an individual, or an artificial person created by law, as a corporation. (2) A collection into one systematic statement of a number of distinct laws, or legal principles. (3) The main part of any instrument; in deeds it is spoken of as distinguished from the recitals and other introductory parts and signatures; in affidavits, from the title and jurat (*q. v.*) See **CORPUS**.

BODY, (heirs of the, in a devise). 2 Mod. 16.
—— (in an indictment for murder). 22 N. Y. 147.

—— (in an indictment for violating sepulture). 5 Park. (N. Y.) Cr. 134.

BODY CORPORATE.—A corporation (*q. v.*)

BODY CORPORATE, (defined). 23 Wend. (N. Y.) 103, 142, 175.

BODY OF A COUNTY.—A county at large as distinguished from any particular place within it.

BODY OF A COUNTY, (what waters are within the). 5 Mas. (U. S.) 209, 290, 301.

BODY POLITIC, or **POLITIQUE.**—The old term for a corporation. Statute of Uses § 1; Co. Litt. 95 a, 250 a.

BODY POLITIC, (defined). 13 Wend. (N. Y.) 334.

BODY, UPON SIGHT OF, (coroner's inquest). 1 Str. 22.

BOHEA TEA, (in trade sense). Wilberf. Stat. L. 124.

—— (in U. S. duty acts). 9 Wheat. (U. S.) 430.

BOILER, (defined). Wright (Ohio) 143.

BOLHAGIUM, or **BOLDAGIUM.**—A little house or cottage.—*Blount*.

BOLT.—The desertion by one or more persons from the political party to which

he or they belong; the permanent withdrawal before adjournment of a portion of the delegates to a political convention.

BOLTING.—A term formerly used in the Inns of Court, whereby is intended a private arguing of cases. The manner of it at Grays Inn, is thus: An ancient and two barristers sit as judges, three students bring each a case, out of which the judges choose one to be argued, which done, the students first argue it, and after them the barristers. It is inferior to mootings and may be derived from the Saxon "bolt," a house, because done privately in the house for instruction.—*Jacob*.

BONA.—Goods; chattels real, and personal; property real, or personal. This word (the plural of the Latin *bonum*) in the Roman law, was chiefly applied to real estate; in the common law, it was confined to movable property; in the civil law, it corresponds to the French term "biens" (*q. v.*), and includes not only "goods" but also chattels real.

BONA CONFISCATA.—Goods confiscated. Property forfeited for crime to the royal *fiscus*, or treasury. 1 Bl. Com. 299.

BONA ET CATALLA.—Goods and chattels. Movable property of every description. See 16 Mees. & W. 68.

BONA FELONUM.—Goods of felons; or those convicted of felony.—*Burrill*.

BONA FIDE.—In good faith, *i. e.* honestly, without fraud, collusion or participation in wrong-doing. The phrase "want of good faith" is chiefly used not so much to denote that kind of fraud which makes a contract or other transaction voidable as between the parties to it, as to denote that kind of collusion or knowledge which disentitles the party to set up a claim against a person who would otherwise be liable to him. Thus, the general rule is, that a person who takes a negotiable instrument in good faith for valuable consideration can sue the person liable on the instrument, notwithstanding a defect in the title of the person from whom he acquired it: if, however, he had notice of the defect in the title, then he would not have taken the instrument in good faith, and would be unable to sue on it. *Goodman v. Harvey*, 4 Ad. & E. 870. See **NEGOTIABLE**.

§ 2. The phrase "bona fide" is often used ambiguously: thus the expression

"a bona fide holder for value" may either mean a holder for real value as opposed to a holder for pretended value, or it may mean a holder for real value without notice of any fraud. &c. Byles Bills 121.

BONA FIDE, (deed). 1 Mod. 119.

— (in a statute). Cowp. 434; 5 T. R. 233.

— (in United States treaty of peace with Great Britain, 1783). 3 Dall. (U. S.) 241.

BONA FIDE CONVEYANCE, (in a statute). 1 Watts (Pa.) 355.

BONA FIDE MISTAKE, (in rule of court). 6 Ch. D. 86.

BONA FIDE MORTGAGEE, (in a statute). 16 Hun (N. Y.) 439.

BONA FIDE PARISHIONER, (defined). 1 Ch. D. 160.

BONA FIDE PRE-EMPTION CLAIMANT, (in an act of congress). 7 Otto (U. S.) 576.

BONA FIDE PURCHASER, (defined). 56 Ala. 266; 42 Ga. 250; 12 Barb. (N. Y.) 605; 14 Am. Dec. 475; 17 *Id.* 136, 521; 18 *Id.* 577; 19 *Id.* 144.

— (in recording act). 2 Scam. (Ill.) 499.

BONA FIDE SHAREHOLDER, (defined). L. R. 3 Ch. 337.

BONA FIDE TRAVELER, (in licensing acts). L. R. 8 Q. B. 483.

Bona fides exigit ut quod convenit fiat: Good faith requires that what one agrees to do he shall do.

Bona fides non patitur ut bis idem exigatur: Good faith does not suffer the same thing to be twice demanded. Although one may have several legal remedies to enforce a right or redress an injury, he may have but one satisfaction; but the maxim does not apply where one remedy is by civil action and the other by criminal prosecution.

Bonæ fidei possessor in id tantum quod ad se pervenerit tenetur: A possessor in good faith is bound for that only which has come to him.

BONA FORISFACTA.—Goods forfeited.

BONA FUGITIVORUM.—Goods of fugitives from justice.

BONA GESTURA.—Good abearance, or behavior.

BONA GRATIA.—Voluntarily; by mutual consent. Used of a divorce obtained by consent of both parties.—*Bouvier*.

BONA IMMOBILIA.—In the civil law, immovables: land, buildings, real estate.

BONA MEMORIA.—Good memory. Used chiefly in respect to testamentary capacity.—*Abbott*.

BONA MOBILIA.—In the civil law, movables, goods and personal chattels, as distinguished from *bona immobilia*.

BONA NOTABILIA.—Such goods as a party dying had in another diocese than that wherein he died, and as amounted at the least to £5, which, whoever had, must have had his will proved before the archbishop of that province, unless, by composition or custom, other dioceses were authorized to do it, where *bona notabilia* were rated at a greater sum. If, however, a person happened to die in another diocese than that wherein he lived, while on a journey, what he had about him of the value of £5 was not *bona notabilia*. (Book of Canons, 1 Jac. Can. 92, 93; Cunningham.) But now under the Court of Probate Act, 1857 (20 and 21 Vict. c. 77, §§ 3, 4), the distinction of goods as *bona notabilia* has been abolished. 1 Wms. Ex. 279, 280.—*Brown*.

BONA PATRIA.—In the Scotch law, an assize or jury of good neighbors.—*Bell Dict.*

BONA PERITURA.—Perishable goods. A carrier is bound to use due diligence in transporting such goods; and when in legal custody they may be sold and the proceeds held in their stead.

BONA UTLAGATORUM.—Goods of outlaws.

BONA VACANTIA.—Goods which are found without any apparent owner. They vest in the crown by exception to the general rule as to occupancy (*q. v.*) Such are wrecks, treasure trove, waifs and estrays. 2 Steph. Com. 529. See those titles.

BONA WAVIATA.—Waived goods; waifs (*q. v.*); stolen goods which the thief throws away in his flight, and which, at common law, belonged to the king.

BONANZA.—In mining parlance, the widening out of a vein of silver, suddenly, and extraordinarily; hence any sudden, unexpected prosperity in mining.—*Webster (Supp.)*

BOND.—

§ 1. **Single, and double or conditional.**—A contract under seal to pay a sum of money (Shep. Touch. 367, adds, "or to do some other thing"). At the present day a contract under seal to do anything other than the payment of money is more commonly called a covenant (*q. v.*), or a sealed writing distinctly acknowledging a debt, present or future; and when this is all the bond is called a single one—*simplex obligatio*. A double or conditional bond is where a condition is added that if the obligor does or forbears from doing some act the obligation shall be void. Formerly such a condition was sometimes contained in a separate instrument, and

was then called a "defeazance" (*q. v.*) The person who binds himself is called the "obligor," and the person in whose favor the bond is made is called the "obligee."

§ 2. **Formal parts.**—The bond usually consists of (1) the obligation or operative part, by which the obligor binds himself to pay the money; (2) any recitals which may be necessary to explain the nature of the transaction; and (3) the condition, which sets out the acts on the performance of which the bond or obligation is to cease to be of effect. Thus, in an ordinary sureties' bond for the payment of a debt, the obligation binds the sureties to pay a sum double the amount of the debt, and hence called the "penalty:" the recitals then explain the circumstances under which the bond is given, and the condition declares that in the event of the debtor paying the debt with interest, &c., on a certain day, the obligation shall be void, *i. e.* the sureties shall no longer be liable for the debt.

§ 3. **Different kinds.**—As to administration, bail, bottomry and replevin bonds, *see* those titles. Voluntary bonds are bonds given without valuable consideration.

§ 4. **Effect of.**—Formerly the common law rule was that on non-performance of the condition of a bond on the day fixed, the penalty was absolutely forfeited and recoverable by the obligee in full; courts of equity gave relief against penalties on payment of the sum or damages actually due or sustained, and by various acts (4 and 5 Anne c. 16; 8 and 9 Will. III. c. 11) the obligee was prevented from recovering even at law more than the sum or damages actually due or sustained. (1 Leake Cont. 575.) At the present day, therefore, a bond merely amounts to a covenant to pay a sum of money, and is adopted partly because the form is sanctioned by antiquity, and partly because it is sometimes more flexible than an ordinary covenant. Formerly bonds, like other specialty contracts, had the advantage of binding the lands of the debtor after his decease, while simple contracts did not; but this difference no longer exists, and at the present day almost the only advantage which a bond has over an ordinary contract to pay money is that

the period fixed by the statute of limitations within which to bring an action is (in most jurisdictions) twenty years instead of six. Stat. 3 and 4 Will. IV. c. 42.

§ 5. **Bonds of companies, &c.**—The term "bond" is also applied to instruments of indebtedness issued by companies, corporations and governments to secure the repayment of money borrowed by them. Sometimes the bond is in the form of a promissory note (in which case it may also be called a debenture, *q. v.*): (*see* *Crouch v. Crédit Foncier*, L. R. 8 Q. B. 374); sometimes it consists of an undertaking to pay the principal and interest, secured by a mortgage or hypothecation of the property of the company or government; sometimes a mortgage of this kind is contained in a trust-deed or a "general bond," by which the property is conveyed to trustees for the bondholders. A bond issued by a government cannot be the subject of an action against the government. *Id.*; and *Twycross v. Dreyfus*, 5 Ch. D. 605. *See* LLOYD'S BONDS; MUNICIPAL BONDS; NEGOTIABLE BONDS.

BOND, (defined). 68 Me. 160; 31 Tex. 397.
 — (does not import a seal). 14 Me. 185.
 — (imports a seal). 1 Baldw. (U. S.) 129; 2 Port. (Ala.) 19; 10 Ga. 162; 1 Blackf. (Ind.) 241; 2 Serg. & R. (Pa.) 502; Harp. (S. C.) 434; 6 Vt. 40.
 — (in forgery statute). 34 Vt. 501.
 — (obligee must be named). 4 Ark. 141; 7 Ired. (N. C.) L. 262.
 — (obligor need not be named). 7 N. H. 230.
 — (scroll answers for seal). 1 McLean (U. S.) 462.
 BOND AND MORTGAGE, (in a declaration). 1 Harr. (N. J.) 54.
 — (loan on by corporation). 7 Wend. (N. Y.) 31.

BOND AND MORTGAGE.—*See* MORTGAGE.

BOND TENANTS.—Copyholders, and customary tenants. 2 Bl. Com. 148.

BONDAGE.—Slavery; a state of involuntary servitude. For a discussion as to the propriety of making this word a distinct juridical term, *see* *Bouvier*.

BONDSMAN.—A surety; more particularly a surety upon an official bond, as distinguished from "bail" who are sureties upon bail bonds and recognizances.

Boni judicis est ampliare jurisdictionem: It is the duty of a good judge to enlarge his jurisdiction. That is, he should, (without usurping jurisdiction not confided to him,) use his remedial authority liberally, in the interest of justice. Indeed, Lord Mansfield says, the true reading of the maxim is *justitiam* instead of *jurisdictionem* as the concluding word (1 Burr. 304), but later jurists do not seem to agree with him.

Boni judicis est iudicium sine dilatione mandare executioni: It is the duty of a good judge to cause execution to issue upon a judgment without delay.

Boni judicis est lites (or causas litium) dirimere: It is the duty of a good judge to put an end to the causes of litigation.

Boni judicis est lites dirimere, ne lis ex lite oriatur: It is the duty of a good judge to stop litigation, lest suit grow out of suit. This, and the maxim next preceding it mean that courts should so apply legal remedies as to prevent circuity of action and multiplicity of suits.

BONIS NON AMOVENDIS.—A writ directing the sheriff to prevent one against whom a judgment had been obtained from removing his goods pending the prosecution and decision of a writ of error.—*Reg. Orig.* 131.

BONO ET MALO.—For good and bad. A special writ of gaol delivery anciently issued for each particular prisoner. Superseded by the general commission of gaol delivery.

Bonum defendentis ex integra causa; malum ex quolibet defectu: The good (success) of a defendant depends upon a perfect case; his harm (defeat) arises out of some defect.

Bonum necessarium extra terminos necessitatis non est bonum: A thing which is good of necessity is not good beyond the limits of the necessity.

BONUS.—(1) A premium paid for making a loan in addition to the legal interest. (2) A premium paid to a grantor or vendor. (3) An additional amount paid for services rendered, but not as a mere gift or gratuity. (4) A premium paid by a corporation for its charter or other privileges.

BONUS, (defined). 16 Wall. (U. S.) 452.

—— (in a will). 13 Ves. 367.

—— (on stock). 2 Madd. 279; Myl. & K. 403; 10 Ves. 135; 14 *Id.* 74.

Bonus iudex secundum æquum et bonum iudicat, et æquitatem stricto juri præfert: A good judge decides according to equity and right, and prefers equity to strict law. This maxim has only a limited application, and does not permit the modification of settled rules of law, however great the hardship of the particular case.

BOOK.—(1) A collection of written or printed sheets of paper bound together; a

volume; a collection of blank sheets, so bound together. (2) A subdivision or part of a treatise or literary work.

BOOK, (in copyright law). 1 Bond (U. S.) 540; 4 McLean (U. S.) 516; 2 Paine (U. S.) 382; 2 Wall. Jr. (U. S.) 547; 1 Wm. Bl. 121; 2 Campb. 25; 4 Ch. D. 163; 11 East 244.

—— (under statute, a single sheet of paper held to be). 2 Campb. 25, 27, 28 *n.*, 29; 11 East 244.

BOOK CASES, (distinguished from "records and precedents"). 2 Show. 278.

BOOK DEBT, (in a statute). 2 Miles (Pa.) 101, 102.

BOOK ENTRIES, (in a statute). 2 Miles (Pa.) 101, 102.

BOOK LAND.—See **BOC LAND**.

BOOK OF ACTS.—The records of a surrogate's court.

BOOK OF ADJOURNAL.—In Scotch law, the original records of criminal trials in the court of justiciary.

BOOK OF RATES.—A small book, declaring the value of goods that pay custom of poundage.—*Jacob*.

BOOK OF RESPONSES.—An account kept by the director of the chancery, in Scotland, in which to note a seizure when he gives an order to the sheriff in that part to give it to an heir whose service has been returned to him.—*Bouvier*.

BOOKS, (false, charge of keeping, in slander case). 5 Johns. (N. Y.) 476; 8 Wheel. Am. C. L. 112, 113.

—— (false, charge of keeping, not actionable). 6 Wend. (N. Y.) 407.

—— (in sheriff's return). 3 Minn. 277, 286.

BOOKS OF ACCOUNT.—The books in which merchants, traders and business men generally keep their accounts. The former bankrupt law, and some of the State insolvent laws, make the failure to keep suitable books of account a cause for withholding a discharge in bankruptcy or insolvency.

BOOKS OF ACCOUNT, (when evidence). 1 Halst. (N. J.) 95; 2 *Id.* 61; 12 Johns. (N. Y.) 462; 11 Wend. (N. Y.) 568; 16 *Id.* 587; 20 *Id.* 72.

BOOKS, PAPERS AND DOCUMENTS, (order for discovery of). 9 Wend. (N. Y.) 458.

BOOKS, PAPERS, &c., (in an award). 1 Wheel. Am. C. L. 466.

BOON DAYS.—In English law, certain days in the year (sometimes called "due days") on which tenants in copyhold were obliged to perform corporal services for the lord.—*Whishaw*.

BOOT, or BOTE.—An old Saxon word, equivalent to "estovers."

BOOTH, (at fair, treated as dwelling house). 1 Moo. & R. 256.

BOOTING, or BOTING CORN.—Rent-corn anciently so called. It is thought to be so called, as being paid by the tenants by way of bote, or boot, viz.: as a compensation to the lord for his making them leases, &c.—*Jacob.*

BOOTY OF WAR.—*See CAPTURE.*

BORD.—An old Saxon word, signifying a cottage; a house; a table.

BORDAGE.—The tenure by which the *bordarii* (*q. v.*) held their "bord lands" (*q. v.*)

BORDARII, or BORDIMANNI.—In old English law, tenants of a less servile condition than the *villani*, who had a bord or cottage, with a small parcel of land allowed to them, on condition they should supply the lord with poultry and eggs, and other small provisions for his board or entertainment.—*Spel. Gloss.*

BORD-HALFPENNY.—A customary small toll paid to the lord of a town for setting up boards, tables, booths, &c., in fairs or markets.

BORD LANDS.—The demesnes which lords keep in their hands for the maintenance of their board or table.—*Jacob.*

BORDER WARRANT.—A process granted by a judge-ordinary, on either side of the border between England and Scotland, for arresting the person or effects of a person living on the opposite side, until he find security, *judicio sisti*.—*Bell Dict.*

BORDLODE.—A service anciently required of tenants to carry timber out of the woods of the lord to his house: or it is said to be the quantity of food or provision which the *bordarii* or bordmen paid for their bord lands.—*Jacob.*

BORG.—A pledge-giver or surety; also the contract of suretyship.

BORGBRICHE.—A breach or violation of suretyship, or of mutual fidelity.—*Jacob.*

BORN, (child when). 2 Paige (N. Y.) Ch. 35; 5 Serg. & R. (Pa.) 40; 1 Whart. (Pa.) 220; 1 Bl. Com. 130; 2 H. Bl. 399; 7 T. R. 100.

BORN, OR TO BE BORN, (in a will). L. R. 6 Ex. 291.

BOROUGH.—

§ 1. In the old sense of the word, borough is "an ancient towne, holden of the king or any other lord, which sendeth burgesses to the parliament." (Litt. § 164; Co. Litt. 109 a.) Many of these boroughs, however, having been disfranchised in modern times, are now only boroughs to this extent, that the land within them is held by tenure in burgage or subject to the

custom of borough-English (*q. v.*) At the present day borough almost always means either a borough corporate (or municipal borough), or a parliamentary borough, (*see* 1 Bl. Com. 115; 1 Steph. Com. 125), most (if not all) municipal boroughs being also parliamentary.

§ 2. A parliamentary borough is a town which returns one or more members to parliament (*see* Parliamentary and Municipal Registration Act, 1878, § 4); some of these towns are ancient boroughs, others are towns on which the right of returning members has been conferred by statute. Stat. 2 Will. IV. c. 45; 30 and 31 Vict. c. 102.

§ 3. Borough fund, and rate.—In the case of a municipal borough regulated by the Municipal Corporations Act, 1835, the income of its property forms a fund, called the "borough fund," out of which the expenses of the corporation are paid; and if it is not sufficient for the purpose, they are authorized to levy a rate, called a "borough rate," on the occupiers of property within the borough. (Stat. 5 and 6 Will. IV. c. 76, § 92; 35 and 36 Vict. c. 91; Grant Corp. 487.) As to district rates or borough rates leviable in parishes, &c., lying partly within and partly without the borough, *see* Stat. 8 and 9 Vict. c. 110.

§ 4. In Scotch law.—A corporation organized under a royal charter.—*Bell Dict.*

§ 5. In American law, the word is little used; in Pennsylvania and Connecticut, however, it is in common use and denotes an incorporated town or village. Bright. Pard. 115; 23 Conn. 128.

BOROUGH, (in an indictment for embezzlement). 18 Ohio St. 496.

— (synonymous with "town"). 1 Bl. Com. 114.

— (synonymous with "village"). 18 Ohio St. 496.

BOROUGH COURTS.—Courts existing in many boroughs in England, and having a local jurisdiction in civil matters. They are courts of record, and are generally held by prescription or charter. In ordinary cases, the recorder of the borough is the judge. As to the procedure in them, *see* the Borough and Local Courts Act, 1872. (3 Com. 292.) The tendency now is to transfer business from these courts to the county courts. Stat. 15 and 16 Vict. c. 54, § 7; 30 and 31 Vict. c. 142, § 29. *See* MAYOR'S COURT OF LONDON; RECORDER; SALFORD HUNDRED COURT.

BOROUGH-ENGLISH.—Some boroughs have a custom that if a man has issue many sons and dies, the youngest son shall inherit all the tenements which were his father's within the borough, as heir unto his father by force of the custom; this is called "borough-English." (Litt. § 165. As to the origin of the custom, *see* Litt. § 211; 2 Bl. Com. 83; Maine Hist. Inst. 222.) In some places the custom extends to collateral heirs, so that the youngest brother succeeds instead of the eldest. Co. Litt. 110 b.

§ 2. There is also a special kind of borough-English, by which the land descends to the younger son if he be not of the half-blood, and if he be, then to the eldest son. *Id.* 140 b.

BOROUGH-SESSIONS.—Courts established in boroughs under the Municipal Corporations Act (5 and 6 Will. IV. c. 76, amended by 6 and 7 Will. IV. c. 105, and 6 and 7 Vict. c. 89). They are held by the recorders of the respective boroughs once a quarter, or oftener if they think fit, and at times to be fixed by them. The jurisdiction is over such offences as are cognizable by the county sessions, whose powers extend to all boroughs which may not have petitioned for a separate court by virtue of section 103 of the Municipal Corporations Act.—*Wharton*.

BORROW, (I, A. B., have borrowed ten pounds, binds executor). *Dyer* 22 b.

BORROWED, (defined). 7 J. J. Marsh. (Ky.) 324.

BORROWER.—One to whom money, or any other thing is loaned at his request. As a bailee he is bound to use due care of the thing borrowed and is liable for slight negligence. (*See* BAILMENT.) In New York, by statute, (1 Rev. Stat. 773, § 8.) a borrower of money may sue in equity for a discovery of usury, without making tender either of principal or interest. As to who is deemed to be a borrower within the meaning of that statute, *see* the references given below.

BORROWER, (in New York statute as to discovery of usury). 10 Abb. (N. Y.) Pr. 24; 30 Barb. 626; 3 Barb. Ch. 640; Clarke 523; 7 Hill 391; 2 N. Y. 131; 14 N. Y. 93; 75 N. Y. 523; 3 Paige 528; 7 *Id.* 598; 9 *Id.* 197; 10 *Id.* 588; 4 Sandf. Ch. 281; 11 Wend. 329, 335.

BORROWING, (defined). 78 N. Y. 159, 177.

—— (stock). 1 Str. 497, 498.

—— (receiving deposits not). 4 Edw. (N. Y.) 134, 165.

BORSHOLDER.—Borough's ealder, or head-borough, supposed to be the discreetest man in the borough, town, or tithing. By the Saxon laws, there was a general custom of bail throughout the country, by which each man was answerable for his neighbor.

BOSCAGE.—That food which wood and trees yield to cattle, as mast, &c. But Manwood observes, to be quit *de boscajo*, is to be discharged of paying any duty of wind-fall wood in the forest.—*Jacob*.

BOSCUS.—Wood; growing wood of any kind, large or small, timber or coppice.—*Cowel*; *Jacob*.

BOTE.—The old-fashioned name for estovards (*q. v.*) In Anglo-Saxon *bót* meant (1) im-

provement or repair; (2) a fine or compensation for a wrongful act. Schmid, *Ges. gl. s. v.*; Co. Litt. 41 b., 127 a.

BOTHA.—In old English law, a booth, stall, or standing in a fair or market.

BOTHAGIUM.—Boothage, or customary dues paid to the lord of the manor or soil, for the pitching and standing of booths in fairs or markets.

BOTHNA, or BUTHNA.—In old Scotch law, a park where cattle are inclosed and fed. Bothena also signifies a barony, lordship, &c.—*Skene Verb. Sig.*

BOTTLE, (demijohn not). 8 Fed. Rep. 485.

BOTTOMRY.—*Dutch*: *bodmerie*, from *bodem*, the keel of a ship. Moll. de J. M. 294.

§ 1. An agreement entered into by the owner of a ship or his agent, whereby, in consideration of a sum of money advanced for the use of the ship, the borrower undertakes to repay the same with a high rate of interest, if the ship terminate her voyage successfully, and binds or hypothecates the ship and freight, or the cargo, for the performance of his contract, the debt being lost in case of the non-arrival of the ship. The instrument by which this is effected is sometimes in the shape of a deed-poll, and is then called a "bottomry bill;" sometimes in that of a bond. Smith Merc. L. 416; Fish. Mort. 84; Wms. & B. Adm. 31.

§ 2. **By master.**—The most important case of borrowing money on bottomry is where the master of a ship is at a foreign port, and finds it absolutely necessary to obtain money, and can only do so by executing an instrument of hypothecation. Smith Merc. L. 418. *See* NECESSARIES; RESPONDENTIA.

§ 3. **Priority.**—A rule peculiar to bottomry and respondentia bonds is, "that if securities of this sort are given at different periods of a voyage, and the value of the ship is insufficient to discharge them all, the last in point of date is entitled to priority of payment; because the last loan furnishes the means of preserving the ship, and without it the former lenders would have entirely lost their security. Smith Merc. L. 421. *See* SALVAGE.

§ 4. **Enforcement.**—A bottomry bond may be enforced by a proceeding *in rem.* in the Admiralty Court. (*See* IN REM.) Maud. & P. Mer. Sh. 441.

BOTTOMRY, (defined). 32 N. Y. 571.

—— (nature of the contract). 1 Curt. (U.S.) C. C. 340.

BOTTOMRY BOND, (defined). 2 Sumn. (U.S.) 157; 23 Wend. (N. Y.) 511.

BOUCHE, or BUDGE, OF COURT.—

A certain allowance of provision from the king, to his knights and servants, that attended him in any military expedition. The French *avoir bouche*, a court, is to have an allowance at court, of meat and drink. From *bouche*, a mouth. But sometimes it extended only to bread, beer and wine; and this was anciently in use as well in the houses of noblemen as in the king's court.—*Jacob*.

BOUGHT AND SOLD NOTES.—

Documents which are usually delivered by brokers to their principals on the conclusion of a contract of sale and purchase, the bought note being delivered to the buyer, and the sold note to the seller.* The notes should contain the names of both the contracting parties, the quantity of the article bought and sold, and the price if agreed upon. They should also substantially correspond with each other; for otherwise, where the same broker acts for both parties, the bought and sold notes do not constitute a binding contract, and where the same broker does not act for both parties, it will be a question for the jury by which note the parties intended to be bound. The notes constitute the original contract between the parties, and are the proper evidence, but not necessarily the only evidence of it. Russ. Merc. Ag. 4. See AGENCY, § 5; BROKER.

BOUND.—(1) One who is to perform an obligation or covenant, or who is a surety, is said to be "bound." (2) In the plural form (bounds), the word is synonymous with "boundary" (*q. v.*) See BOUNDS.

BOUND, (in a letter of instructions to a bank). 14 Me. 185.

—— (property, by a levy). 6 Halst. (N. J.) 225.

—— (sheriff, to execute writ). 4 East 539.

BOUND, AS NOW, (in a contract). 8 Allen (Mass.) 296.

BOUND BAILIFF.—In English law, a deputy sheriff, or sheriff's officer; so called because bound to the sheriff for the due execution of his office.

BOUND, BECAME, (grantor and his heirs). 10 East 128.

BOUND BY INDENTURE, (in a statute). 10 Serg. & R. (Pa.) 416.

BOUND ON THE RIVER, (in a deed). 5 Greenl. (Me.) 69.

—— (in a grant). 1 Halst. (N. J.) 1; 2 Wheel. Am. C. L. 495.

—— (owner's right to use water). 1 Chit. Gen. Pr. 191, 197-9.

BOUND ON THE MARGIN OF A RIVER, (in grant of land). 6 Cow. (N. Y.) 518.

BOUND TO A. IN \$50.00, I AM, (obligation will bind executor). Dyer 21 a.

BOUND WITH SECURITY, (in a statute). 5 Serg. & R. (Pa.) 329.

BOUND WITH SURETY, (in a statute). 6 Binn. (Pa.) 53.

—— (not bound to give security for goods). 1 Atk. 470.

BOUNDARIES.—

§ 1. A boundary is that imaginary line which divides two pieces of land from one another. The line is generally, but not necessarily, marked or indicated on the surface of the land by a wall, fence, ditch or other object. Where land belonging to a private person adjoins the sea or a public tidal river, the boundary is usually the line of medium high tide, while, in the case of a non-tidal or private stream, the boundary between the adjoining estates is presumed *prima facie* to be the *medium filum* of the stream. Ditches and fences between adjoining estates are also presumed to be party boundaries, and to belong to the owners as tenants in common. (Hunt Bound. 1, 4, 12, 25.) The same rule generally applies to a party wall. *Watson v. Gray*, 14 Ch. D. 192; *Gale Easmt.* 513 (*q. v.*)

§ 2. **Liability to maintain.**—Every owner of land is so far liable to keep up a fence or other material boundary that he is liable for a trespass if he allows his animals to stray on the land of his neighbor. (*Gale Easmt.* 515.) There are, however, cases in which a person is absolutely bound to keep up a fence, or the like, between his own and his neighbor's land; such a liability may arise by prescription. (*Id.* 516; *Hunt Bound.* 32.) A tenant is also bound, in the absence of an agreement to the contrary, to maintain the fences of the property demised to him, and if the demised land adjoins land belonging to himself, he is under an obligation to keep the boundaries distinct during the term. *Id.*

*According to Burrill and Wharton the buyer gets the sold note and the seller the bought note

81: *Att.-Gen. v. Fullerton*, 2 Ves. & B. 264.
See FENCES.

§ 3. **Remedy.**—In England, where there is a dispute between two adjoining owners as to the boundary between their lands, the question may, in a simple case, be determined by an action of trespass or recovery of land; but where the boundaries have been confused, so that it becomes necessary to establish old boundaries, to direct intermingled land to be separated, or an equivalent set out, or the like, the proper remedy is an action in the Chancery Division for a commission to ascertain the boundaries. (*Hunt Bound.* 205; *Wake v. Convers*, 1 Eden 331; 2 White & T. Lead. Cas. 394.) A landlord is also entitled to this remedy if the tenant has confused the boundaries of his own and the demised land. *Spike v. Harding*, 7 Ch. D. 871. In this case, however, an inquiry in chambers was directed instead of a commission being issued. See PERAMBULATION.

§ 4. **Of mine.**—If a mine owner trespasses on his neighbor's land by excavating beyond the boundary, he may be restrained by injunction; and for this purpose, in a case of suspected trespass by underground working, the court will, if necessary, allow an inspection; i. e. give the plaintiff leave to go on and into the land of the defendant and see whether he is really working under the plaintiff's land. *Hunt Bound.* 67. See BARRIER.

§ 5. **Inclosure commissioners.**—As to the jurisdiction of the inclosure commissioners in respect to boundaries, see Stat. 8 and 9 Vict. c. 118; 9 and 10 Vict. c. 70. Their jurisdiction extends not only to land in process of inclosure under the acts, but also to any land which belongs to separate owners, but which is intermixed or inconveniently subdivided. *Cooke Incl.* 144.

BOUNDARIES, (given in a deed, how far controlling). 8 Wend. (N. Y.) 183, 190.

— (of land, how proved). 2 Wheel. Am. C. L. 489, 494; 14 East 331.

— (not necessary to state lines). 1 Barn. & Ald. 550; 3 Barn. & C. 870

— (on a river). Ang. Waterc. 9.

BOUNDARY, (defined). 3 La. 83.

— (on the sea). 9 Wall. (U. S.) 587.

BOUNDARY LINE, (what regarded as). 15 Wend. (N. Y.) 642.

— (acquiescence in). 12 Wend. (N. Y.) 127.

— (fixed by lessee). 9 Wend. (N. Y.) 65.

BOUNDED ALONG THE RIVER, (in the description of land). 5 Pet. (U. S.) 485.

— (middle of river the line of property). 4 Grif. L. Reg. 1291 n.

BOUNDED BY A MONUMENT STANDING ON THE BANK OF A RIVER, (in description in a deed). 24 Wend. (N. Y.) 451.

BOUNDED BY A RIVER, (lands granted as). 2 Wheel. Am. C. L. 498.

BOUNDED BY THE BANK OF A RIVER, (in grant of land). 6 Cow. (N. Y.) 549.

BOUNDED BY THE RIVER, (in a deed). 3 Greenl. (Me.) 474; 14 Mass. 149; 17 Id. 289.

— (in a grant). 6 Cow. (N. Y.) 546.

— (carries right of soil and fishery). 4 Grif. L. Reg. 1286, 1295.

BOUNDED BY THE STREAM, (in the description of land). 1 Pet. (U. S.) C. C. 64.

BOUNDED DOWN THE RIVER, (what passes) Ang. Waterc. 9.

— (owner's right to fish up and down).

4 Grif. L. Reg. 1286 n.

BOUNDED HOWEVER OTHERWISE, (in a deed). 11 Pick. (Mass.) 193.

BOUNDED NEAR THE RIVER, (right to waters in front). Ang. Waterc. 6.

BOUNDED ON, (lands, in a deed). 4 Wend. (N. Y.) 633.

BOUNDED ON A STREET, (in a deed). 10 Mass. 146.

— (lands conveyed, to constitute dedication of street). 1 Hill (N. Y.) 191.

BOUNDED ON A WAY, (in a deed). 17 Mass. 296, 413.

BOUNDED ON THE RIVER, (in grant of land). 6 Cow. (N. Y.) 546; 5 Wend. (N. Y.) 423.

— (safest boundary for land). Ang. Waterc. 3.

— (in waters not navigable, rights of proprietors of land). Burr. 2164.

— (owner's right of fishery in waters in front of land). 4 Grif. L. Reg. 1286, 1295 n.

— (right of owners to protect land from water). 1 Barn. & Ad. 874.

BOUNDED ON THE ROAD, (in a deed). 1 McCord (S. C.) 67.

— (ejectment will lie for lands described only as). Burr. 133, 143.

— (owner may inclose lands, conditions what). Burr. 465.

— (proof may be offered as to ownership of land, adjoining). 7 Bing. 332.

BOUNDED ON THE SEA, (in a deed). 4 Barn. & C. 485.

— (in a grant). 2 Wheel. Am. C. L. 495.

— (owner may protect land from inroad of the sea). 1 Chit. Gen. Pr. 199; 1 Barn. & Ad. 874, 878.

— (owner bound to repair sea-wall). 1 Barn. & C. 477.

— (may take shingle from sea-beach to repair road). 2 Barn. & Ad. 236.

— (in absence of proof of ownership soil presumed to belong to owner of adjoining estate). 3 Barn. & Ad. 863.

BOUNDED ON TIDE-WATER, (grant of land). 3 Paige (N. Y.) 313.

BOUNDED TO THE BANK OF A RIVER, (in a deed). 1 Halst. (N. J.) 65.

— (right to waters). Ang. Waterc. 7.

BOUNDED TO THE RIVER, (in a deed). 3 Hawks (N. C.) 21.

BOUNDED UPON STREETS, (conveyance of lots). 11 Wend. (N. Y.) 491.

BOUNDS.—In the English law of mines, the trespass committed by a person who excavates minerals underground beyond the boundary of his land is called "working out of bounds." The person on whose land the trespass is committed may bring an action for damages in one of the common law divisions of the high court, or an action in the chancery division for an injunction, and an account of the minerals taken, in which case he may obtain an inspection. *Bain. M. & M.* 506. See BOUNDARIES, § 4; BARRIER.

BOUNDS, (in conveyancing). 14 Barb. (N. Y.) 216.

BOUNDS OF PRISON, (in a bond to keep within). 7 Halst. (N. J.) 16.

BOUNDERS.—Visible marks or objects at the ends of lines drawn in surveys of land, showing the courses and distances.—*Burrill*.

BOUNTY.—An additional compensation, premium or gratuity, paid to soldiers, fishermen, and others, by government, for services beneficial to the public.

BOUNTY, (defined). 27 Md. 320; 8 Allen (Mass.) 80; 39 How. (N. Y.) Pr. 481.
—— (in a statute). 8 Allen (Mass.) 84.

BOUNTY LANDS.—Portions of the public domain given to soldiers for military services, by way of bounty.

BOUNTY MONEY, (defined). 39 How. (N. Y.) Pr. 481.

BOUNTY OF QUEEN ANNE.—A royal charter confirmed by Stat. 2 Ann. c. 11, providing for the forming a perpetual fund for the augmentation of poor ecclesiastical livings.—*Wharton*.

BOURSE DE COMMERCE.—In the French law, an aggregation sanctioned by government, of merchants, captains of vessels, exchange agents, and courtiers, the two latter being nominated by the government, in each city which has a *bourse*.—*Brown*.

BOUWERYE, or **BOUWERIE**.—The old New York name for a farm. The owner was called a "bouwmaster."

BOVATA TERRÆ.—As much land as one ox can plough.—*Jacob*.

BOVILL'S ACT.—See **PARTNERSHIP ACT**.

BOW-BEARER.—An under-officer of the forest, whose duty it is to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented, without any concealment, in the next Court of Attachment, &c.—*Crompt. Jur.* 201.

BOZERO.—In the Spanish law, an advocate; a pleader of causes, either another's or his own, and either for the plaintiff or defendant.

BRACINUM.—A brewing; the whole quantity of ale brewed at one time, for which *tolsestor* was paid in some manors. *Brecina*, a brewhouse.—*Wharton*.

BRACTON.—Henricus de Bracton is the author of a work entitled *De Legibus et Consuetudinibus Angliæ*, written during the reign of Henry III. He is said to

have been a judge under that king. The work itself is a systematic exposition of the English law, being to some extent an adaptation of Azo's *Summa* to the Institutes of Justinian. It is a work of great historical interest, and is still occasionally cited on obscure questions of law. The only complete editions are the folio of 1569 and the quarto reprint of 1640, both printed in an inconvenient and repellent form. A new edition, under the editorship of Sir Travers Twiss, is now being published by the record commissioners. See 2 Reeves Hist. 86; Güterbock on Bracton. See also **BRITTON**; **GLANVILLE**.

BRANCH.—(1) Those of the descendants of a remote ancestor who trace their descent to some intermediate ancestor, who is himself descended from such remote ancestor. (2) A warrant or commission given to a pilot.

BRANCH, (of a river). 2 Pet. (U. S.) 438.
BRAND, (in a statute). 11 Hun (N. Y.) 571

BRANDING.—An ancient mode of punishing offenders, now generally disused, except for some military offences, by burning with a hot iron.

BRANDING IN THE HAND.—See **BENEFIT OF CLERGY**.

BRANKS.—An instrument formerly used in some parts of England for the correction of scolds; a scolding bridle. It inclosed the head, and a sharp piece of iron entered the mouth and restrained the tongue.

BRAWLING.—By Stat. 5 and 6 Edw. VI. c. 4, if any person, by words only, quarreled, chided or brawled in a church or churchyard, the ordinary (*i. e.* the bishop) was to suspend him, if a layman, *ab ingressu ecclesie*, and if a clerk in holy orders, from the ministration of his office, during pleasure. And if any person in a church or churchyard proceeded to smite or lay violent hands upon another, he was excommunicated *ipso facto*: if he struck the person with a weapon, or drew any weapon with intent to strike, he was, on conviction by a jury, to have one of his ears cut off; or if he had no ears, to be branded with the letter F in his cheek, in addition to being excommunicated. (4 Bl. Com. 146; see **EXCOMMUNICATION**.) By the Stat. 23 and 24 Vict. c. 32, the jurisdiction of the ecclesiastical courts over laymen for brawling was taken away, and all riotous, violent or indecent behavior in any church or recognized place of religious worship was made a misdemeanor, punishable on summary conviction by fine or imprisonment. Steph. Cr. Dig. 102; and see Stat. 52 Geo. III. c. 155, § 12.

BREACH.—

§ 1. **Of close, pound, prison.**—The invasion of a right or the violation of a duty. The word is used in a literal sense in such phrases as “breach of close,” which is an old-fashioned name for the tort of breaking a man’s close—in other words, trespassing on his land, more generally called trespass *quare clausum fregit* (see TRESPASS; 3 Bl. Com. 209; 3 Steph. Com. 399), also in “pound-breach” and “prison-breach,” the last of which is a criminal offence. See the titles.

§ 2. **Of contract.**—More usually, breach is applied to the violation of an obligation. Breach of a contract, promise or covenant, is the failure to perform it (see PERFORMANCE); it converts the right under the contract, &c., into a right to obtain a remedy for the breach, generally a right of action. See REMEDY. Leake Cont. 460.

§ 3. **Constructive.**—What may be called a constructive breach is an act of the promisor which disables him from performance, or a refusal to perform before the time of performance arrives; as if A. contracts to convey land to B. at a future time, and, before the time arrives, conveys it to C., B. may at once sue A. for breach of his contract. Main’s Case, 5 Rep. 21 a; Leake Cont. 460.

§ 4. **Breach of promise of marriage** gives rise to a right of action for damages, unless the breach was justifiable, *e. g.* if the man, after making the promise, discovers that the woman is unchaste. (Macq. Husb. & W. 229.) The parties to such an action are competent to give evidence in it, but the plaintiff’s testimony must be corroborated by some other material evidence. Stat. 32 and 33 Vict. c. 68; Best Ev. 255. 773.

§ 5. **Assignment of breaches.**—By 8 and 9 Will. III. c. 11, in an action on a bond for non-performance of any covenant or condition, the plaintiff may assign (*i. e.* specify) as many breaches as he pleases, and the jury shall assess the damages on such breaches as shall be proved at the trial, or if he obtains an interlocutory judgment (see JUDGMENT), he suggests as many breaches as he likes, and a writ of inquiry issues to assess the damages. (See WRIT OF INQUIRY.) The judgment will be entered up for the whole penalty, but is only allowed to be executed to the extent of the damages assessed; it stands as a security for further breaches, and if there shall afterwards be any further breaches, upon a *scire facias* by the plaintiff on the judgment, suggest-

ing the breaches, then the damages will be assessed. Archb. Pr. 817; Davids. Conv. v. (2) 273; 1 Wms. Saund. 67.

BREACH OF CLOSE.—See BREACH, § 1; TRESPASS.

BREACH OF COVENANT.—See BREACH, § 2.

BREACH OF DUTY.—The failure to execute the duties of an employment, office or trust, in a lawful and proper manner.

BREACH OF GOOD BEHAVIOR, (to remove clerk from office). 2 Mart. (La.) N. S. 683.

BREACH OF POUND.—See POUND-BREACH.

BREACH OF PRISON.—See PRISON-BREACH.

BREACH OF PRIVILEGE.—A breach of privilege is a contempt of the High Court of Parliament, whether relating to the House of Lords or to the House of Commons. Both branches of the legislature act on the same grounds, both declare what are and what are not breaches of their privileges, when the question is raised, and both punish by commitment or otherwise, as the courts of law and equity do for contempt of court. Resistance to the officers of the houses of parliament has, in almost all cases, been treated as a breach of the privileges of parliament. The presence of strangers is a breach of privilege, though permitted on sufferance; and, formerly, to take a note of any of the proceedings was a high act of contempt, although now the representatives of the newspaper press are not only allowed to be present for that purpose, but have a gallery to themselves in each house, and every accommodation afforded them which the courtesy of the chief officers of both can render.—Brown.

BREACH OF PROMISE.—See BREACH, § 4.

BREACH OF THE PEACE.—Breaches of the peace are offences against public order. They are commonly divided into actual, constructive and apprehended.

§ 1. **Actual** breaches of the peace include riotous and unlawful assemblies, riots, affrays, forcible entry and detainer, &c. 4 Bl. Com. 142; 4 Steph. Com. 248; Steph. Cr. Dig. 40 *et seq.* See those titles.

§ 2. **Constructive** breaches of the peace include the offences of sending challenges and provoking to fight, going armed in public without lawful occasion in such a manner as to alarm the public, &c. These are misdemeanors, punishable with imprisonment and other penalties. *Id.*

§ 3. **Apprehended.**—An apprehended breach of the peace is where one man threatens another with bodily injury, or with injury to his wife or children, or where a man goes about with unusual weapons or attendance, to the terror of the people, or publishes an aggravated libel of another. In such a case the offender may be summoned before a justice of the peace, and bound over to keep the peace for a limited time, by entering into a recognizance with sureties, and, in default, committed to prison for a limited time. (Stone Just. 368 *et seq.*; 4 Steph. Com. 293, where a distinction is drawn between recognizances for the peace (as in the cases mentioned above), and recognizances for good behavior, said to be applicable in the cases of drunkards, vagabonds, &c.) This may also be done where a person has been convicted of a misdemeanor or felony. Stat. 24 and 25 Vict. cc. 96, 97, 98, 99, 100.

BREACH OF TRUST.—

§ 1. **What constitutes.**—The doing by a trustee of an act which is unauthorized or forbidden by the terms of his trust, or where he omits to do an act which the trust requires him to do. Thus, in general, a trustee commits a breach of trust when he employs trust funds in his own business, or when he fails to call in and convert into money such parts of the trust property as are of a fluctuating or deteriorating kind. Lew. Trusts 738 *et seq.*; Wats. Comp. Eq. 903; Umlin Trust. 114.

§ 2. **Remedy for.**—A breach of trust is in the nature of a tort, and entitles the *cestui que trust* who has been injured to compel the trustee to make good the loss caused by it. There is even something penal in the relief given in some cases of breach of trust: thus, where a trustee has employed trust funds in his own business, and has thereby made a profit, the *cestui que trust* is entitled to it, although the trust estate has not been injured. (Lew. Trusts 742; Wats. Comp. Eq. 885.) As to accounts with rests directed against trustees, see ACCOUNT, §§ 12, 14.

§ 3. **Injunction.**—A *cestui que trust* is also entitled to an injunction to restrain his trustee from committing a threatened breach of trust. Lew. Trusts 697.

§ 4. **Criminal.**—Where a breach of trust

amounts to a fraudulent misappropriation or disposition of the trust property, it is a criminal offence in England, and also in some few of the States, punishable with imprisonment or penal servitude; the fiat of the attorney-general is required before the prosecution can be instituted. Stat. 24 and 25 Vict. c. 96, § 80 *et seq.*; Lew. Trusts 735.

BREAD USUALLY SOLD, (in a statute). Wilberf. Stat. L. 141.

BREAK, (defined). 5 Binn. (Pa.) 283.

BREAK AND ENTER A STORE, (in an indictment). 1 Mass. 476.

BREAKING.—In the law as to burglary, the forcibly making an entrance into a building with intent to steal therein, or the forcibly making an exit therefrom in the effort to escape. As to what specific acts constitute a sufficient "breaking" to support an indictment, see the cases referred to below.

BREAKING, (what sufficient to constitute burglary). 36 Ala. 481; 43 *Id.* 17; 49 *Id.* 344; 5 Bush (Ky.) 376; 22 Mich. 229; 27 *Id.* 151; Coxe (N. J.) 439; 9 Ired. (N. C.) L. 463; 68 N. C. 207; 36 Tex. 675; 14 Gratt. (Va.) 643; 25 *Id.* 908; Jebb Cr. Cas. 99.

— (what not sufficient). 4 Ala. 643; 51 Ga. 285; 1 Moo. C. C. 178.

BREAKING A DOOR, (by sheriff, to levy). 1 Hill (N. Y.) 336.

BREAKING AND ENTERING, (what is). 7 Am. Rep. 556.

— (distinguished from "burglary"). 105 Mass. 588.

— (in an indictment). 111 Mass. 402.

BREAKING BULK.—Where a carrier or other bailee appropriated to his own use an entire parcel, package, case or trunk committed to his charge, he was not deemed guilty of larceny or embezzlement at common law, but was liable civilly only, for breach of trust, or conversion. But if he opened the parcel, package, &c. (which was called "breaking bulk"), and converted a portion of its contents, the act was larceny. In England, by Stat. 24 and 25 Vict. c. 96, § 3, such an appropriation of the bailor's goods by the bailee is made larceny, though there be no breaking bulk. Similar statutes prevail in some of the States.

BREAKING JAIL.—See PRISON BREACH.

BREDWITE.—A fine or penalty imposed for defaults in the assise of bread: to be exempt

from which, was a special privilege granted to the tenants of the honor of Wallingford by King Henry II.—*Jacob*.

BREEZE, (delivery of, in sale of coal). 5 Esp. 239.

BREHON LAW.—In Ireland, the judges and lawyers were anciently styled "brehons;" and thereupon the Irish law was called the "brehon law." (4 Inst. 358.)—*Jacob*.

BREMEN THALER, (value of). 3 Blatchf. (U. S.) 391.

BRENAGIUM.—A payment in bran, which tenants anciently made to feed their lords' hounds.—*Blount*.

BREPHOTROPHI.—A civil law term for persons having charge of foundlings.—*Burrill*.

BRETHREN, (in a will). 1 Rich. (S. C.) Eq. 78.

BRETTWALDA.—The ruler of the Saxon heptarchy.

BREVE.—A writ, by which a person is summoned or attached to answer an action, complaint, &c., or whereby anything is commanded to be done in the courts, in order to justice, &c. It is called *breve*, from the brevity of it, and is addressed either to the defendant himself, or to the chancellors, judges, sheriffs, or other officers.—*Skene, v. Breve*.

BREVE DE RECTO.—A writ of right, or license for a person ejected out of an estate, to sue for the possession of it when detained from him.—*Jacob*.

BREVE INNOMINATUM.—A writ giving only a general statement, without the details or particulars of the cause of action.

Breve ita dicitur, quia rem de qua agitur, et intentionem petentis, paucis verbis breviter enarrat: A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief.

BREVE JUDICIALE.—A judicial writ; any writ issued in an action other than an original one.

Breve judiciale debet sequi suum originale, et accessorium suum principale: A judicial writ ought to follow its original, and an accessory its principal.

Breve judiciale non cadit pro defectu formæ: A judicial writ fails not through defect of form.

BREVE NOMINATUM.—A writ stating the circumstances or details of the cause of action.

BREVE ORIGINALE.—An original writ; one by the service of which the suit was commenced, or *originated*.

BREVE PERQUIRERE.—To purchase a writ or license of trial, in the king's courts, by the plaintiff, *qui breve perquisivit*; whence the usage of paying 6s. 8d. fine to the crown where the debt is £40, and of 10s. where the debt is £100, &c., in suits and trials for money due upon bond, &c.—*Wharton*.

BREVE TESTATUM.—(1) In feudal and old English law, a written memorandum in the nature of a conveyance, attested by witnesses, and used as proof of the conveyance or investiture of lands. (2 Bl. Com. 307.) (2) In old Scotch law, a memorandum made at the time of a transfer of land, under the seal of the superior, and attested also by the *pares curiæ*.—*Bell Dict.*

BREVET.—(1) In American military law, a commission promoting an officer to a higher rank, but not entitling him to a corresponding increase of pay. And see for further restrictions, U. S. Rev. Stat. §§ 1209, 1212. (2) In French law, an authority or warrant from the government to an individual, conferring a benefit upon him, or granting him an exclusive privilege. Thus, *brevet d'invention* means letters patent for an invention.

BREVIÀ.—Writs. Used in this form—the plural of *breve* (q. v.)—principally in the following phrases—

Brevia adversaria: Adversary writs; those brought adversely to recover land.

Brevia amabilia: Amicable or friendly writs; writs brought by agreement or consent of the parties.

Brevia anticipantia: Anticipating writs; writs of prevention. See *Termes de la Ley*.

Brevia de cursu: Formal writs issuing as of course. See **BREVIA FORMATA**.

Brevia formata: Original writs of prescribed and established form, issued in the proper actions, as of course, without special cause shown.—*Bract*, 413 b.

Brevia innominata.—See **BREVE INNOMINATUM**.

Brevia judicialia.—See **BREVE JUDICIALE**.

Brevia magistralia: Writs framed and issued by masters in chancery, not following any established form, but varying in accordance with the peculiarities of the particular case.—*Bract*, 413 b.

Brevia nominata.—See **BREVE NOMINATUM**.

Brevia selecta: Choice writs or processes. Often abbreviated to *Brev. Sel.*

Brevia, tam originalia quam judicialia, patiuntur Anglica nomina: Writs, as well original as judicial, bear English names. 10 Co. 132.

Brevia testata.—See **BREVE TESTATUM**.

BREVIARIUM ALARICIANUM.—A compilation made by order of Alaric II. and published for the use of his Roman subjects in the year 506.—*Bouvier*.

BREVIATE.—An abstract or epitome of a writing; a brief.—*Holthouse.*

BREVIBUS ET ROTULIS LIBERANDIS.—A writ or mandate to a sheriff to deliver unto his successor the county, and the appurtenances, with the rolls, briefs, remembrances and all other things belonging to that office.—*Reg. Orig.* 295.

BREWER, (defined). 14 U. S. Stat. at L. 117, § 9.

BREWHOUSE WITH APPURTENANCES, (mortgage of, what includes). 1 Atk. 477.

BRIBE—BRIBERY.—

§ 1. **Officer.**—A bribe is a gift or payment made to a judicial or other public officer in order to influence or reward him in respect of, or in relation to any business having been, being, or about to be transacted before him, in his office. Bribery is the misdemeanor committed by a person who gives or offers a bribe, and by a public officer who accepts one. Steph. Cr. Dig. 77; 1 Russ. Cr. 318.

§ 2. **At elections.**—Bribery at elections is the offence of giving, offering or promising any money or other valuable consideration in order to induce any voter (or person not a voter, but supposed by the briber to be) to vote or refrain from voting, or as a reward for his having voted or refrained from voting; the voter who receives or contracts for any such bribe, is also guilty of bribery. It is a misdemeanor, and makes the election void. An unsuccessful attempt is also criminal.

BRIBED, (in an indictment). 3 Metc. (Ky.) 226.

BRIBERY, (defined). 10 Iowa 212; 2 Wheel. Am. C. L. 498 n.

—— (what amounts to). 4 Vr. (N. J.) 102; 36 Tex. 293.

—— (of elector). L. R. 4 Q. B. 626.

BRIBOUR.—A pilferer; a thief. Stat. 28 Edw. II. c. 1.

BRICOLIS.—An engine by which walls were beaten down.—*Blount.*

BRIDEWELL.—A house of correction.

BRIDGES.—

§ 1. A bridge is a building of stone or wood erected across a river, for the common ease and benefit of travelers.—*Jacob.* Wharton's definition is "a building of brick, stone, wood, or iron, erected across a river, ditch, valley, or other place other-

wise impassable, for the common ease and benefit of travelers."

§ 2. **In England,** at common law, the expense of maintaining a public bridge falls on the county, borough, city, &c., in which it is situate, except where a parish is bound by prescription to repair a bridge; in such a case the parish and county may enter into a contract for the repair of the bridge by the county. As to private bridges, see **TOLL.** In the case of bridges built since the Highway Act, 1835, the repair of the road passing over or adjoining to a bridge is done by the parish or other authority or persons bound to the general repair of the highway of which it forms a portion. Any parish, county, or other body or person neglecting the duty of repairing a bridge is liable to an indictment. 3 Steph. Com. 129.

§ 3. **Turnpike bridges.**—Numerous bridges have been built under statutory powers, *e. g.* under turnpike acts. On the determination of a turnpike trust, the bridges vest in the county Stat. 33 and 34 Vict. c. 73, § 12.

§ 4. **Injuries to bridges.**—Causing malicious injuries to bridges, so as to destroy them or make them dangerous or impassable, is a felony punishable with penal servitude for life (*maxi seq*). Stat. 24 and 25 Vict. c. 97, §§ 33 *et seq*

§ 5. **In America,** "bridge companies," or corporations chartered to build and maintain bridges, with the right to take tolls, are common; bridges are also frequently erected by the State, and lands condemned for that purpose under the right of eminent domain; so, too, towns and counties are required by law, in many instances, to erect and maintain bridges, and railroad companies are required to do so where the line crosses a highway either above or below the surface. But the statutory regulations applicable to the subject are so numerous and differ so much in detail, that space cannot be afforded them here.

BRIDGE, (defined). 1 Wall. (U. S.) 147; 12 Cush. (Mass.) 244; 3 Harr. (N. J.) 108; 1 Vr. (N. J.) 137, 147; 2 Beas. (N. J.) 503.

—— (what constitutes). 3 Adolph. & E. 69.

—— (what structure is not). 26 Conn. 578.

—— (duty to repair). 1 Barn. & Ald. 289.

—— (in charter provision). 11 Pet. (U. S.) 420; 2 Dill. (U. S.) 332; 17 Conn. 40; Sax. (N. J.) 382, 383.

—— (indictment for not repairing). 6 Mod. 255.

—— (in a statute concerning bridges). 11 Vr. (N. J.) 302.

—— (need not be over water). 37 Me. 451.

—— (not a highway within the meaning of statute). 2 Barn. & Ald. 49.

—— (not including floating bridge). Wilberf. Stat. L. 126.

—— (not subject to taxation under statute taxing ferries). 13 Serg. & R. (Pa.) 424.

BRIDGE, (over navigable stream, power to erect). 15 Wend. (N. Y.) 132.

—— (power to repair). *Ld. Raym.* 580.

—— (public and private). 12 East 201.

BRIDLE ROAD, (defined). 16 Gray (Mass.) 175, 181.

BRIDLE WAY, (in a statute, deemed a highway). 13 East 97.

BRIEF.—Brief in Norman-French meant a writ (2 Co. Litt. 73b), and a writ was so called, *quia breviter et paucis verbis intentionem proferentis exponit*. (Bract. 413.) It is possible that a brief to counsel originally consisted merely of the writ with the Norman-French name for it on the back. In early times the pleadings were oral.

§ 1. In English practice, a brief is a document containing the materials or instructions furnished by a solicitor to a barrister to enable him to represent the client on the trial of an action, or on the hearing of a petition, motion, summons or other application. Strictly speaking, the brief includes all the documents supplied to counsel, such as copies of pleadings, affidavits, correspondence, &c.; but in a more technical sense the brief is that document which is drawn up by the solicitor in the form of a narrative or explanatory comment on the case. At the trial of an action where the evidence is given *vivâ voce*, this is the most important part of the documents supplied to counsel, consisting as it does of an expanded version of the pleadings, with the important documents set out and commented on, and the proofs of the witnesses. On the trial of an action where the evidence is given by affidavit, and on the hearing of a petition, motion, &c., the brief, in this sense, is less important, as the counsel have the facts of the case stated in the other documents. In chancery practice the brief, in this sense, is frequently called "observations," being merely annexed to the petition or other documents in the case. As to briefs generally, see Archb. Pr. 345; Dan. Ch. Pr. 841 n (z.)

§ 2. **Hand-briefs**.—Formerly, certain orders were obtainable, as a matter of course, on production of a brief purporting to contain instructions to counsel to apply to the court for the order required, and indorsed with counsel's hand, (*i. e.* signature,) although the matter was never mentioned to the court at all; these were hence called "hand-briefs;" they appear to be quite obsolete.

§ 3. In the Scotch law, brief is used in the sense of "writ," and this seems to be the sense in which the word is used in very many of the ancient writers.

§ 4. In American practice, a brief is, generally, (1) a mere memorandum drawn up for the purpose of assisting counsel upon the trial; (2) a memorandum prepared by (or for) counsel employed to argue questions of law, containing the points of law for which he is to contend, and the authorities which are cited to sustain them; (3) a statement of the case on appeal, required by statute in some of the States to be filed, before argument, in the appellate court, for the information of the court and the counsel on the other side.

BRIEF, (of counsel, requisites of). 43 Ind. 356.

BRIEF OF TITLE.—An abstract of title (*q. v.*)

BRIEF STATEMENT, (in practice). 29 Me. 499.

BRIEF AL'EVESQUE.—A writ to the bishop which, in *quare impedit*, shall go to remove an incumbent, unless he recover or be presented *pendente lite*. 1 Keb. 386.

BRIGBOTE, or **BRUG-BOTE**.—To be freed from the reparation of bridges; the liberty or exemption of being free from tribute or contribution towards the mending or re-edifying of bridges.—*Jacob*.

BRING, (causing vessel to be brought into port). 6 East 52.

BRING UP CHILDREN, (under provisions of a will). 2 Day (Conn.) 338; 10 Pick. (Mass.) 507; 4 Wheel. Am C. L. 435; Cro. Eliz. 252.

BRINGING AN ACTION, (what constitutes). 3 Binn. (Pa.) 212.

BRINGING IN, (in statement upon which slander is brought). *Ld. Raym.* 812.

BRINGING MONEY INTO COURT.—See **PAYMENT INTO COURT**.

BRINGING OF A SUIT, (defined). 1 Hill (N. Y.) 633.

BRISSONIUS.—Barnabé Brisson was born in Poitou in 1531, became avocat-général in the parliament in 1575, président à mortier in 1583, and died on the 15th of November, 1591. His principal works are *De Verborum Significatione* and *De Formulæ et Solemnibus Verbis*.—*Holla. Encycl.*

BRISTOL BARGAIN.—Where A. lends B. £1000 on good security, and it is agreed that £500, together with interest, shall be paid at a

time stated; and as to the other £500, that B., in consideration thereof, should pay unto A. £100 *per annum* for seven years.—*Wharton*.

BRITISH BRIG, (in marine insurance policy). 2 Binn. (Pa.) 370.

— (sailing under Swedish papers, held to be Swedish). 3 Campb. 475.

BRITISH CUSTOM, (in bill of lading). L. R. 8 Q. B., 362.

BRITTON is the name given to a work on English law written in the reign of Edward I., by an author whose identity has not been clearly established. The work is in Norman-French, and claims to be promulgated with the authority of the king. It is founded to a great extent on *Fleta*, and to a less extent on *Bracton*; the arrangement, however, is quite different from that of either of those treatises, being based on the remedies appropriate to the various rights, rather than on the rights themselves. Britton has the advantage over other early treatises in having been admirably edited. Britton, edited (for the Clarendon Press) by Mr. Francis Morgan Nichols: 1865.

BROCAGE.—(1) The wages or hire of a broker; also termed "brokerage." (Stat. 12 Rich. II. c. 2.) (2) The business or occupation of a broker. 16 Mees. & W. 177 n.

BROCARIUS—BROCATOR.—In old English and Scotch law, a broker or middleman.—*Blount*; *Cowel*; *Bell Dict.*

BROCELLA.—A wood; thicket or covert of bushes and brush-wood.—*Jacob*.

BROKEN STOWAGE.—That space in a ship which is not filled by her cargo.

BROKER.—

§ 1. A broker is an agent for the purchase and sale of goods, being employed by an intending vendor to find a purchaser, or by an intending purchaser to find a vendor. His remuneration consists of a commission or payment (called brokerage) proportionate to the price of the goods sold. A broker differs from a factor (*q. v.*) in the following respects: He generally contracts in the name of his principal, while a factor may buy and sell either in his own name or in that of his principal; he is merely a negotiator between the parties, and is therefore not entrusted with the possession or control of the goods, while a factor is. (Russ. Merc. Ag. 3;

Chit. Cont. 189.) Stockbrokers are an exception to these rules.

§ 2. The different kinds.—Brokers are differently called according to the nature of the business which they transact for their clients or principals. Thus, bill or note brokers are those who negotiate the purchase and sale of negotiable paper; also called exchange brokers when they deal in foreign bills of exchange; insurance brokers are those who effect insurance for their employers and act as middlemen between the insurer and insured; merchandise brokers resemble factors, except that they do not have the possession or control of the goods as factors do; pawnbrokers are lenders of money in small sums on the security of personal property left with them in pawn or pledge, and they receive a higher rate of interest than usually allowed for the use of money; real estate brokers are those who negotiate between the buyer and seller of real property, either finding a purchaser for one desirous to sell, or *vice versa*; they also manage estates, lease or let property, collect rents and negotiate loans on bond and mortgage; ship brokers attend to the freighting of ships, and to their sale and transfer; stock brokers are those whose business it is to purchase and sell, on their clients' order or request, the shares of stock of railroad companies and other corporations, and the bonds of such companies, or of governments, either National, State or municipal. They use their own money (except that a "margin" or percentage of the price is required from the purchaser to secure the broker against loss by sudden fluctuation of the market), and buy in their own names, in which respect they differ from other classes of brokers.

§ 3. Frauds by brokers.—In English criminal law, a broker who fraudulently misappropriates money or property belonging to his employer is guilty of a misdemeanor. (Stat. 24 and 25 Vict. c. 96, §§ 75 *et seq.*) And in the absence of any such statute, he would seem to be punishable under statutes punishing larceny by a bailee.

§ 4. London brokers.—Brokers in the city of London, before exercising their callings, are required to be admitted by the mayor and

aldermen, and to pay a yearly fee of 40s. to the city (Stat. 6 Anne c. 68), increased to £5 per annum by Stat. 57 Geo. III. c. 60 (local and personal). Formerly, the mayor and aldermen exercised control over brokers in other respects, but this was abolished by the Stat. 33 and 34 Vict. c. 60. See AGENCY; BOUGHT AND SOLD NOTES; LIEN.

BROKER. (defined). 50 Ind. 234, 239; 27 La. Ann. 385; 27 Me. 362; 68 Pa. St. 42; 4 Burr. 2104; 2 H. Bl. 556.

—— (distinguished from "factor" and "commission merchant"). 23 Wall. (U. S.) 321, 330; 50 Ala. 154, 156.

—— (authority of). 51 Barb. (N. Y.) 244; 2 Barn. & Akl. 137.

—— (contract by). 13 Ves. 473.

—— (in bankruptcy act, held to include "pawnbroker"). 1 Atk. 206.

—— (in U. S. internal revenue act). 1 Otto (U. S.) 704; 23 Wall. (U. S.) 321, 330.

—— (liability of). 1 Nott. & M. (S. C.) 173.

—— (scrivener held to be). 1 Atk. 143.

—— (who is, under tax law). 1 Abb. (U. S.) 470; 1 Otto (U. S.) 704.

—— (who is not). 1 Oreg. 218.

BROKERAGE.—(1) The commissions or compensation of a broker; (2) his business or occupation.

BROSSUS.—Bruised, or injured with blows, wounds or other casualty.—*Cowel.*

BROTHEL.—A common habitation of prostitutes. The statutes for the repression or regulation of houses of this character are 25 Geo. II. c. 36; 28 Geo. III. c. 18, and 58 Geo. III. c. 70. Any inhabitant of the parish may give any information thereof to the parish constable, and the overseers of the parish are to pay to the informant, upon conviction, a reward of £10.—*Brown.* See BAWDY-HOUSE.

BROTHER.—A male person born of the same parents with another, in which case he is a brother of the whole blood to that other; also, he, one only of whose parents is also the parent of another, in which latter case he is a half brother to that other. See BLOOD.

BROTHER-IN-LAW.—A wife's brother or a sister's husband. There is not any relationship, but only affinity between brothers-in-law.

BROTHER, (in a bequest). 109 Mass. 179.

BROTHERS AND SISTERS, (in statute of descent). 5 Blackf. (Ind.) 412; 7 Id. 442; 34 Iowa 547; 8 Ohio St. 501.

BROUGHT BEFORE JUSTICES, (in pauper act). 9 East 107.

—— (under statute requiring offender to be). 2 Chit. Gen. Pr. 179.

BROUGHT UP AS APPRENTICES, (must be such seven years, under statute). 15 East 168.

BRUGBOTE.—See BRIGBOTE.

BRUILLUS.—A wood or grove; a thicket or clump of trees in a park or forest.—*Jacob.*

BRUISE, (in an indictment for murder.) 1 Murph. (N. C.) 452.

BRUTUM FULMEN.—An empty noise; an empty threat.

BUBBLE.—A project started by dishonest individuals to cheat and rob the public. The South Sea project and the railway mania, for examples. The 6 Geo. I. c. 18, punished such fraudulent undertakings; but the act was partly repealed by 6 Geo. IV. c. 91; and the 6 Geo. IV. c. 91, and 4 and 5 Wm. IV. c. 94, are repealed by 1 Vict. c. 73.—*Wharton.*

BUBBLE ACT.—The Stat. 6 Geo. I. c. 18 passed in 1719, for the purpose of restraining numerous visionary and extravagant business schemes called "bubbles," which were very prevalent in England prior to that time, and which consisted in the formation of companies with little or no capital, but with flaming prospectuses, with intent to obtain money from the public by the sale of their shares.

BUDGET.—The chancellor of the exchequer makes one general statement every year to the House of Commons, which is intended to present a comprehensive view of the financial condition of the country. Sometimes there are preliminary, or supplemental, or occasional speeches; but the great general statement of the year has, for a long time past, been quaintly called "The Budget," from the French *hougette*, by a common figure of speech, putting the name of that which contains, to signify the thing contained. The annual speech known by that appellation, embraces a review of the income and expenditure of the last, as compared with those of preceding years; remarks upon the financial prospects of the country; an exposition of the intended repeal, modifications, or impositions of taxes during the season, and a detail of the public expenditure during the current period, with its grounds of justification. (Dod Parl. Comp.) The secretary of state for India also makes an annual financial statement for his department.—*Wharton.*

BUGGERY.—See SODOMY.

BUGGERY, (defined). 1 Va. Cas. 307.

BUILD, (defined). 2 Ind. 162.

—— (agreement to). 3 Ves. 184.

—— (bridge, subject to right of public to cross). 6 East 154.

—— (contract to). 3 Day (Conn.) 312.

—— (covenant to). 2 H. Bl. 389; 2 Bro. Ch. C. 166; 6 Ves. 353.

BUILD, (covenant to, distinguished from "covenant to repair"). 3 Atk. 515.

— (in canal charter). 2 Ind. 162.

— (in city charter). 17 N. Y. 449.

BUILD AND FINISH A HOUSE, &c., (in a contract). 2 Hall (N. Y.) 167.

BUILD AND MAINTAIN, (in charter of incorporation). 21 Kan. 61.

BUILD ON LAND, (grant of privilege to). 16 Johns. (N. Y.) 184.

BUILDER, (in lien act). 71 N. Y. 413.

BUILDER OF A VESSEL, (in statute giving lien). 3 Ct. of Cl. 297.

BUILDING.—A house, or edifice, composed of wood, stone, brick, iron or other material. It may be either fastened to the soil by sunken foundations, or set upon piles or blocks, but it must be intended to remain and to be used as a habitation or shelter in the place where it is erected.

BUILDING, (meaning of, in common parlance). 16 Johns. (N. Y.) 14.

— (covenant not to erect). 2 Abb. (N. Y.) Pr. N. S. 308.

— (erected for election purposes). 3 Dowl. & Ry. 96.

— (must be annexed to freehold). 1 Barn. & Ad. 161; 1 Chit. Gen. Pr. 152.

— (in arson statute). 44 N. H. 386; L. R. 1 C. C. R. 338.

— (in a deed, when includes "fence"). 16 Johns. (N. Y.) 14.

— (in a lease). 113 Mass. 481.

— (in a statute). 9 Gray (Mass.) 297; 13 *Id.* 311; 18 Wend. (N. Y.) 137; 1 Chit. Gen. Pr. 171, 173; 5 Man. & G. 9, 33; L. R. 1 C. P. 148, 155.

— (in an indictment). 1 Mass. 516; 112 *Id.* 279.

— (in covenant in lease). 1 Taunt. 19.

— (in mechanics' lien law). 4 Conn. 68; 13 Gray (Mass.) 311; 2 Vr. (N. J.) 477, 484; 8 N. Y. 383; 59 Pa. St. 64; 2 Serg. & R. (Pa.) 138; 3 Watts (Pa.) 140; 11 Wis. 119, 214.

— (unfinished). 7 Car. & P. 516.

— (what, tenant may take away). 3 Esp. Cas. 11; 2 East 88.

— (when annexed to freehold cannot be removed). 3 East 47.

— (within ordinance against erecting wooden buildings). 10 Watts (Pa.) 307.

BUILDING FOR PURPOSES OF EDUCATION, (in a deed). 105 Mass. 423.

BUILDING FOR RELIGIOUS WORSHIP, (in statute of exemption from taxation). 12 R. I. 19.

BUILDING GROUND, (where house is described as bounded by, no right to build so as to obstruct lights). 9 Bing. 305.

BUILDING LANDS, (in lands clauses consolidation act). L. R. 4 H. L. 610.

BUILDING MATERIALS, (under lien act). 2 Serg. & R. (Pa.) 170.

BUILDING LEASE.—A demise of land for a long term of years, the lessee covenanting to erect certain edifices thereon according to specification. (As to such leases of settled estates,

see 19 and 20 Vict. c. 120, and 21 and 22 Vict. c. 77.)—*Wharton*.

BUILDING SOCIETIES.—

§ 1. A building society is one established for the purpose of raising, by the subscriptions of some of its members, a stock or fund for making advances to others of its members upon security of real estate, by way of mortgage. (Dav. B. Soc. 53; Stone B. Soc. *passim*.) The advances are generally, but not necessarily, made to enable the members to acquire the property which they mortgage to the society. Theoretically, therefore, the members are of two classes—the borrowing members being those who have obtained advances from the society, and the investing members those who have not, (Scratchl. B. Soc. 2,) and who therefore simply participate in the profits arising from the interest paid by the borrowers. Provision is generally made by the rules of the society for determining, in case of competition, the members to whom the available funds of the society are to be advanced from time to time.

§ 2. In England, a building society is formed either under the Act 6 and 7 Will. IV. c. 32, or under the Act of 1874, and is regulated by rules registered with the registrar. (Act of 1874, §§ 16, 17.) A society formed or re-registered under the Act of 1874 is a corporation. Act of 1874, § 9; Act of 1875.

§ 3. **Terminating societies**.—Building societies are of two principal kinds: A terminating society is one which by its rules is to terminate at a fixed date, or when a given result has been attained. (Build. Soc. Act 1874, § 5.) "The general plan of these societies may be thus briefly described: A certain number of persons form themselves into a society, of which they become members by subscribing for a certain number of shares. Upon each share a certain periodical subscription of uniform amount is payable throughout the whole duration of the society, the object being to continue the society until the members' subscriptions, being invested, shall amount to a fund large enough to give every member a sum fixed by the rules at the commencement. Thus it may be proposed to close the society when there are funds sufficient to give to the members seventy pounds in respect of each share held by them, and the monthly subscription will be 7s. 6d. . . . When by means of the subscriptions the society has in hand a sum of (say) seventy pounds, it will be advanced to one of the members upon mortgage of land or house property, and the member will thenceforth pay a increased subscription (perhaps 13s. 6d.) so long as the society lasts." (Dav. B. Soc. 55.) There are two varieties of the terminating society, called "Bowkett" and "Starr-Bowkett" soci-

eties, from the names of their originators: the principle on which they are based is too complicated to be described here. See *Dav. B. Soc.* 50 *et seq.*; *Second Rep. of Com.* 14.

§ 4. **A permanent society**, as its name implies, may last forever. In a society of this kind, shares are issued upon which the various members make payments, either in one sum, when the share is said to be "paid up," or by periodical or other sums; the interest is either allowed to accumulate until the share has reached the full value prescribed by the rules, or else paid out yearly to the member, as he may prefer. Advances are made to borrowing members or strangers, repayable by small periodical instalments, extending over a fixed term of years. *Dav. B. Soc.* 60.

§ 5. **Co-operative building society**.—A society may be formed under the Industrial and Provident Societies Act, 1876 (repealing the Acts of 1862 and 1871), for the purpose of buying and selling land, with power to mortgage, lease or build upon land bought or taken on lease by it. Such societies are sometimes called "co-operative building societies." *Dav. B. Soc.* 278 *et seq.*

§ 6. **Freehold land societies** are only in form within the scope of the Building Societies Acts. In a society of this kind "subscriptions are received from the members in the way generally adopted by building societies, and, with the funds thus acquired, an estate is purchased in some eligible situation. The property is then laid out in lots of a size suited to the wants of the members; roads are made, and other improvements effected, the cost of which, and of the conveyance to the society, is added to the amount of the purchase-money. The total sum thus expended upon the whole estate is then equitably apportioned amongst the several lots, and determines their price. . . . The members are thus enabled to obtain a small quantity of land at wholesale price." (*Dav. B. Soc.* 63.) As a building society formed under the Building Societies Acts cannot legally hold land, except as security for advances, such an arrangement as the one above described is in reality *ultra vires*, and has to be effected through the medium of trustees, on whose honor the members must rely. This kind of society was invented principally to give the working classes votes in the days when the franchise was higher than it is now. *Second Rep. of Com.* 16.

BUILDING, WHARF OR OTHER SUPERSTRUCTURE, (does not include a "ditch"). 12 Cal. 542.

BUILDINGS, (in covenant to repair). 2 Barn. C. 608.

—— ("sheds" held to be). 10 Bing. 69.

BUILT, (in a contract). 38 Iowa 33.

—— (in a subscription for railroad stock). 20 Ohio St. 190.

—— (ship, under navigation act). 1 Stark. 14.

—— (when a railroad is). 38 Iowa 33; 20 Ohio St. 190.

BULL.—(1) A cant term of the stock exchange, signifying one who speculates for a rise

in the market. (2) A brief or mandate of the pope or bishop of Rome, so called from the seal of lead or gold affixed to it, upon which was engraved on one side an image of St. Paul on the right of a cross, and that of St. Peter on the left, and on the other the pope's name, and the year of his pontificate. To procure, publish, or put in use any of these is made treason by 13 Eliz. c. 2, and 7 Anne c. 21; and see 28 Hen. VIII. c. 16.—*Wharton*.

BULLETIN.—An official notice of a public transaction or matter of public importance.

BULLION.—Uncoined gold and silver in the mass. Those metals are called so, either when smelted from the native ore, and not perfectly refined; or when they are perfectly refined, but melted down into bars or ingots, or into any unwrought body of any degree of fineness.—*Wharton*.

BURDEN OF PROOF.—A phrase used to denote the duty of proving a fact or facts in dispute on an issue raised between the parties in an action. This duty lies upon the party who substantially asserts the affirmative of the issue, and is imposed upon him, not because it is impossible to prove a negative, but because the affirmative is capable of more simple and direct proof. 1 Greenl. Ev. § 74. See **PROOF**.

BURDEN OF PROOF, (defined). 16 N. Y. 66.
—— (in a charge to a jury). 68 Me. 244.

BUREAU.—A place for the transaction of the business of an office. In relation to the transaction of government business this term is applied, in England and the United States, to subordinate divisions of the highest departments of government. In most of the European countries it is applied to those departments themselves.

BUREAUCRACY.—A government by departments, each under a chief; a word to describe the system used in an invidious sense.—*Wharton*.

BURG—BURGH.—A term anciently applied to a castle or fortified place; a borough (*q. v.*)—*Spel. Gloss*.

BURGAGE.—(1) A term used anciently to denote a dwelling-house in a borough town. (2) Tenure in burgage is where the king or some other person is lord of an ancient borough, and the tenements in the borough are held of him by a yearly rent or other certain service. "And such tenure is but tenure in socage" (*Litt.*

§ 162; Co. Litt. 108b), being a kind of town socage, as distinguished from common socage, which is usually of a rural nature. (*See* SOCAGE.) Many tenements held by burgage tenure are subject to a great variety of customs, of which the most remarkable is that called "borough-English" (*q. v.*) 2 Bl. Com. 82.

BURGATOR.—In old criminal law, one who broke into and robbed an inclosed place.—*Spel. Gloss.*

BURGBOTE.—A term applied in the old English law, to a contribution towards the repair of castles or walls of defence, or of a borough.

BURGENSES.—In old English law, the inhabitants of a borough. *See* BURGESS.

BURGERISTH.—A word used in Domesday, signifying a breach of the peace in a town.—*Jacob.*

BURGESS.—(1) A freeman of a borough; one properly admitted as a member of a municipal corporation. Formerly a distinction was made in England between the "burgess" of a borough and the "citizen" of a city, but in modern usage inhabitants of a city are frequently termed "burgesses." (2) One who is legally entitled to vote at elections. (3) The magistrate or chief officer of a borough. (4) The representative of a borough in parliament.

BURGESSES, (how elected, and when). 4 Barn. & Ad. 835, 843.

—— (must be inhabitants). 9 Barn. & C. 424.

—— (of a borough, under a statute). 2 Binn. (Pa.) 115 n.

—— (right to elect). 12 East 30.

BURGESS ROLL.—A roll, required by the Act 5 and 6 Will. IV. c. 76, to be kept in corporate towns or boroughs, of the names of burgesses entitled to certain new rights conferred by that act.

BURGH-BRECHE.—A fine imposed on the community of a town, for a breach of the peace, &c.

BURGH ENGLISH.—*See* BOROUGH-ENGLISH.

BURGH-MAILS.—Yearly payments to the Crown of Scotland, introduced by Malcolm III., and resembling the English fee-farm rents.—*Encyc. Lond.*

BURGHMOTE.—A court of a borough.—*Jacob.*

BURGWHEAR.—A burgess (*q. v.*)

BURGLAR.—One who commits the crime of burglary (*q. v.*)

BURGLAR. (defined). 53 Md. 153; 5 Park. (N. Y.) Cr. 57.

BURGLARIOUSLY.—A word which is held to be essential in indictments for burglary at common law.

BURGLARY.—"This word *burglar* is derived of these two words, viz.: *burgh*, signifying an house, and *laron*, signifying a thief, as it were an house-thief." 8 Inst. 63.

§ 1. **At common law and under English statutes.**—By the common law, burglary is where a person breaks and enters any dwelling-house by night, with intent to commit a felony therein, whether such felonious intent be executed or not (Steph. Cr. Dig. 231; 2 Russ. Cr. 2.) The "breaking" is either actual (as where the person makes a hole in a door or opens a window), or in law (as where he obtains an entrance by threats or fraud, or by collusion with some one in the house) (*Id.*) A person who breaks out of a dwelling-house by night is guilty of burglary if he entered it by day with intent to commit a felony, or if he committed a felony therein before breaking out. 2 Russ Cr. 7.

§ 2. **Under statutes in the United States.**—In the several States there are various enactments concerning burglary which modify to some extent the common law definition. In some of the States it may be committed by day as well as by night.

BURGLARY, (defined). R. M. Charl. (Ga.) 80; 29 Ind. 80; 7 Mass. 247; 37 Mich. 544; Coxe (N. J.) 439; 8 Cow. (N. Y.) 715; 1 Dev. (N. C.) L. 253; 9 Ired. (N. C.) L. 463; 2 Wheel. Am. C. L. 499 n.

—— (what constitutes). 4 Cranch. (U. S.) C. C. 604; 43 Ala. 17; 5 Day (Conn.) 131; 1 Root (Conn.) 63; 6 City H. Rec. (N. Y.) 1; 42 Vt. 629.

—— (in Code of Practice.) 5 Baxt. (Tenn.) 569.

—— (in crimes act). 16 Mich. 142.

—— (larceny not included in). 29 Cal. 622.

—— (what breaking is not). 3 Park. (N. Y.) Cr. 552.

—— (what building is subject of). 48 Ga. 505; 24 Conn. 57; 4 Johns. (N. Y.) 424; 60 Pa. St. 103.

—— (what entry is not). Hill & D. (N. Y.) 63.

BURGOMASTER.—A term applied in Germany, to the officer clothed with the functions of a mayor.

BURIAL.—

§ 1. **Right of.**—At common law, every person may be buried in the churchyard of the

parish where he dies, unless he was within certain ecclesiastical prohibitions (*e. g.* not having been baptized), and provided that the rites of the Church of England are observed. (Stat. 4 Geo. IV. c. 52, provides for the burial of suicides in churchyards without Christian rites.) But no person is entitled to be buried in the church itself without the consent of the incumbent, unless such a right exists by prescription, as belonging to a manor-house or other messuage. The right of burial may be enforced by *mandamus* or information (Phillim. Ecc. L. 839 *et seq.*), or by the ecclesiastical punishment of suspension. (*Id.* 857.) The common law rule, that every burial in a parochial churchyard must be celebrated according to the rites of the Church of England, has been abolished in England by the Burial Laws Amendment Act, 1880 (43 and 44 Vict. c. 41), which provides that a deceased person may be buried within the churchyard or graveyard of a parish or ecclesiastical district or place, without the Church of England service for the burial of the dead, provided proper notice of the intended burial is given to the incumbent; the burial may take place either without any religious service, or with any Christian and orderly religious service. The act only extends to burial grounds in which the parishioners or inhabitants of the parish or ecclesiastical district have rights of burial, and it expressly enacts that it shall not authorize the burial of any person in any place where such person would have had no right of interment if the act had not passed; nor authorize the burial of any person in a burial ground vested in trustees, without the performance of any express condition on which, by the terms of the trust deed, the right of interment may have been granted.

§ 2. **Fees.**—Fees on burial are due only by custom in each place, and not by the general law. 2 Steph. Com. 740.

§ 3. **Statutes concerning.**—The principal English statutes relating to burials are the Stat. 10 and 11 Vict. c. 65, regulating the making and management of cemeteries by companies incorporated for that purpose; Stat. 15 and 16 Vict. c. 85, making provision for closing burial grounds in the metropolis for the protection of the public health; Stat. 16 and 17 Vict. c. 134, extending those provisions to other cities and towns; and Stat. 20 and 21 Vict. c. 81, as to burial grounds for the paupers.

§ 4. **Burial boards.**—The Stats. 15 and 16 Vict. c. 85, and 16 and 17 Vict. c. 134, (as amended by Stat. 18 and 19 Vict. c. 128,) also contain enactments for providing a new burial ground in any parish where the existing burial ground is insufficient or dangerous to health: in such case a burial board is appointed by the vestry, with power to purchase land for a burial ground, and to borrow money for that purpose, the expenses being charged on the poor rate. See also the Burial Act, 1871, and the acts mentioned in the schedule to that act; and § 343 of the Public Health Act, 1875, re-enacting the enactments set out in schedule 5, part 3.

§ 5. **Public Health Act.**—The Public Health (Interments) Act, 1879, empowers local authorities to acquire, construct and maintain

cemeteries, subject to the provisions of the Cemeteries Clauses Act, 1847, and the Public Health Act, 1875. See MORTUARY.

§ 6. **Grants of land for burial grounds.**—Stats. 30 and 31 Vict. c. 133; 31 and 32 Vict. c. 47; and 36 and 37 Vict. c. 50, contain provisions for voluntary grants and sales of land for the purposes of burial grounds, including gifts of land by limited owners, such as tenants for life. (Phillim. Ecc. L. 853.) As to the registration of burials, see REGISTRATION.

BURIAL, (rights of). 1 Barn. & Ad. 122.

BURIAL GROUND, (in a statute). 103 Mass. 104.

BURKING, or BURKISM.—Committing murder in order to sell the body for dissection.

BURLAW' COURTS.—In Scotch law, courts consisting of neighbors selected by common consent to act as judges in determining disputes between neighbor and neighbor.

BURN.—See ARSON.

BURN, (in crimes act). 5 Cush. (Mass.) 427; 16 Mass. 105; 3 Ired. (N. C.) L. 570; 10 Rich. (S. C.) L. 23.

— (in indictment for arson). 17 Ga. 130.

BURNED AND CONSUMED, (in an indictment for arson). 110 Mass. 403.

BURNING, (a ship). 4 Dall. 417.

— (not synonymous with "setting fire to").

5 Gratt. (Va.) 664.

— (what constitutes arson). 16 Johns. (N. Y.) 203; 5 Cush. (Mass.) 427; 32 Vt. 158; 1 Car. & M. 541; 9 Car. & P. 45.

BURNING A HOUSE, (in a statute). 16 Mass. 105.

BURNING IN THE HAND.—In the old criminal practice, when a lay offender was allowed the benefit of clergy, he was burned with a hot iron on the brawn of the left thumb, in order to prevent his claiming the benefit a second time. 4 Bl. Com. 367. See BENEFIT OF CLERGY.

BURROCHUM.—A burroch, dam, or small weir over a river, where traps are laid for the taking of fish.—*Cowel*.

BURROWMEALIS.—A term used in the Scotch law, to designate the rents paid into the king's private treasury by the burgesses or inhabitants of a borough.

BURSARIA.—The bursery, or exchequer of collegiate and conventual bodies; or the place of receiving and paying, and accounting by the *bursarii*, or bursers, A. D. 1277. But the word *bursarii* did not only signify the bursars of a convent or college; but formerly stipendiary scholars were called by the name of *bursarii*, as they lived on the burse or fund, or public stock of the university. At Paris, and among the Cistercian monks, they were particularly termed by this name.—*Jacob*.

BURSE.—An exchange or place of meeting of merchants. *See* BOURSE.

BURYING-GROUND.—A place for the interment of the dead; a cemetery (*q. v.*)

BUSHEL.—A dry measure, containing four pecks, eight gallons, or thirty-two quarts.—*Webster*. The dimensions, and weight of the contents of a bushel are regulated by statute in the different jurisdictions.

BUSHEL, (defined). 4 Metc. (Ky.) 121.

—— (what constitutes). 5 T. R. 356; 6 *Id.* 338.

—— (in contract to furnish wheat). 1 Hill (N. Y.) 102.

—— (of corn, defined). 13 Vt. 245.

—— (without reference to any custom or particular agreement, means a statute bushel). 4 T. R. 314.

BUSHELS, (of corn, devise of). 2 Atk. 599; 3 *Id.* 121.

BUSHELS OF GOOD MERCHANTABLE WHEAT, in a contract). 1 Hill (N. Y.) 102.

BUSSA.—A term used in the old English law, to designate a large and clumsily constructed ship.

BUSINESS, (defined). 2 Allen (Mass.) 395; 23 N. Y. 244.

—— (exercise of, in covenant in lease.) 1 Mau. & Sel. 95.

—— (in a banking contract). 9 Vr. (N. J.) 230.

—— (in a contract not to carry on). 34 How. (N. Y.) Pr. 202; 10 Ch. D. 691.

—— (in a statute). 2 Allen (Mass.) 395; 16 Ch. D. 487, 488.

—— (in married women's act). 52 Miss. 168.

—— (in policy of fire insurance). 80 Pa. St. 407.

—— (in power of attorney). 2 Smith, 79, 80; 1 Taunt. 347, 351.

—— (in submission to arbitration). 1 Wheel. Am. C. L. 423; 13 Serg. & R. (Pa.) 322.

—— (in Sunday act). 51 Wis. 46.

—— (not synonymous with "work" or "labor"). 2 Ohio St. 387.

—— (place of, in commercial usage). 1 Pet. (U. S.) 582.

—— (synonymous with "employment"). 16 Ala. 411.

—— (teaching school is). 1 Mau. & Sel. 95.

BUSINESS CORPORATION, (in bankrupt law). 1 Holmes (U. S.) 30, 103; 5 Am. L. T. Rep. 400.

BUSINESS HOURS.—That portion of the day during which business is generally transacted.

BUSINESS HOURS, (defined). 18 Minn. 133.

—— (for presentment and demand of bills and notes). 2 Hill (N. Y.) 635.

BUSINESS OF A COURT, (judicial sale not). 4 Abb. (N. Y.) Pr. N. S. 11.

BUTCHER, (in covenant in lease). 1 Barn. & Ald. 617.

—— (in revenue law). 53 Ala. 523.

BUTLER'S ORDINANCE.—A law for the heir to punish waste in the life of the ancestor. Though it be of record in the parliament book of Edw. I., yet it never was a statute, nor ever so received; but only some constitution of the king's council, or lords in parliament, which never obtained the strength or force of an act of parliament.—*Hale C. L.* 18.

BUTLERAGE.—*See* PRISAGE.

BUTT.—A term applied in old English law, to a measure of wine containing 126 gallons.—*Jacob*.

BUTTALS.—A contraction of "abut-tals." *See* ABUT.

BUTTS.—(1) The ends of short pieces of land in arable ridges or furrows. (2) The place where archers meet with their bows and arrows to shoot at a mark.—*Wharton*.

BUTTS AND BOUNDS.—A phrase used in conveyancing, to describe the lines which bound a certain piece of land. The phrase "metes and bounds" is also frequently used with the same meaning.

BUY, (power to A.) 3 T. R. 454.

BUYER'S OPTION, (in an order to buy stocks). 100 Mass. 416.

BUYING TITLES.—Purchasing the rights to lands of parties who are out of possession. At common law the sale of the legal title to land by a disseized party is void, and this is the general rule in the United States, in some of which the vendor is also punishable criminally for making such sale.

By, (a certain day, contract to deliver). 1 Hill (N. Y.) 519.

—— (a certain time, contract to finish work). 3 Pa. 48.

—— (distinguished from "with"). 5 Serg. & R. (Pa.) 330.

—— (in a grant). 6 Gill (Md.) 121.

—— (when equivalent to "to"). 105 Mass. 175.

—— (when means "according to"). 78 Pa. St. 78.

BY A STREAM, (in a deed). 3 Sumn. (U. S.) 170.

BY AUTHORITY, (laws printed). 8 Gray (Mass.) 150; 17 Serg. & R. (Pa.) 237.

BY-BIDDING.—The making of bids for property at auction, by or at the request of the owner, not for the purpose of pur-

chasing, but in order to raise the price by inducing others to make higher bids. Persons engaged in this practice are frequently termed "puffers" (*q. v.*)

BY BILL.—This term was anciently applied to actions commenced by original *bill* instead of by original *writ*. It was later used to denote actions commenced by *capias*.

BY C. D. HIS ATT'Y. (in articles of agreement). 10 Wend. (N. Y.) 87.

BY ESTIMATION.—A phrase frequently used in conveyances in reference to the quantity of land intended to be conveyed where it is not accurately ascertained by measurement. Thus, "containing ten acres *by estimation*," or, as it is sometimes expressed, "containing ten acres *more or less*."

BY GOD AND MY COUNTRY.—The reply given by a prisoner upon arraignment under the old English criminal practice, to the question as to how he would be tried.

BY HIS AGENT, (in a declaration on a promissory note). 8 Wheat. (U. S.) 642.

BY LAND OF S. (in a deed). 19 N. H. 273.

BY-LAWS, or BYE-LAWS.—Apparently from Danish *by-love*; Swedish *by-lag*, = *leges urbanæ*, laws of particular towns. Muller Etym. Wortb. s. v.

Rules made by some authority (subordinate to the legislature) for the regulation, administration or management of a certain district, property, undertaking, &c., and binding on all persons who come within their scope. (*Termes de la Ley*; Lum. Byl. 2.) Thus, every statute incorporating a railway company gives it power to make by-laws for the regulation of its line. (Hodg. Railw. 426, 548.) Municipal corporations have a similar power; (Grant Corp. 76; Lum. Byl. 15,) but the term

"ordinance" (*q. v.*) is more frequently used in this connection. In England, the homage of the customary court in some manors has, by custom, the right of making by-laws for the regulation of the common, *e. g.* the draining and fencing of the land, stinting the number of cattle, &c. Elt. Copyh. 244; Fox v. Amhurst, L. R. 20 Eq. 404.

BY-LAW, (defined). 1 Cush. (Mass.) 493; 7 Barb. (N. Y.) 508.

— (distinguished from "regulation"). 34 N. J. L. 134.

— (effect of). 4 Mees. & W. 621, 640.

— (of a corporation). 5 Vr. (N. J.) 134.

— (of city, defined). 19 L. J. N. S. (Q. B.) 135.

BY-LAWS, (cannot create a forfeiture). 9 Wend. (N. Y.) 571.

— (how pleaded). 17 Wend. (N. Y.) 199.

— (in a charter). 2 Green (N. J.) 223.

— (power of corporation to make). 12 Wend. (N. Y.) 136.

BY MEANS OF A FALSE PRETENCE, (in a statute). 108 Mass. 313.

BY NIGHT, (in a statute). 6 Vr. (N. J.) 73.

BY, OR ON A STREAM, (in a grant). 39 Miss. 169.

BY-ROAD, (defined). 5 Dutch. (N. J.) 516.

BY THE BYE.—In the English practice, when a party was in the custody of the court under process in an action, either a different plaintiff, or the same plaintiff for another cause of action, could formerly proceed against him by filing a declaration *by the bye*. This practice is now abolished.

BY THE COURT, (at end of judge's order). 5 Minn. 27, 28.

BY THE ROAD, (in a location of lands). 5 Cranch (U. S.) 191.

BY THE YEAR, (parol lease). 2 Miles (Pa.) 302.

BY 12 O'CLOCK, (in a notice of motion). Barnes 296.

BY WHOSE MEANS, (in general statutes of Mass.) 110 Mass. 210.

C.

C, as the third letter of the alphabet, is used as a numeral, in like manner with that use of A and B (*q. v.*) It was also used among the Romans on the judicial ballots of condemnation as the initial letter of *condemno*, I condemn. For its use as an abbreviation, *see* TABLE OF ABBREVIATIONS, *ante* p. v.

C. O. D. (in express receipt). 59 Ind. 263.

CABAL.—HEBREW: *cabala*, tradition; or FRENCH: *cabale*, intrigue.

(1) A hidden or imaginary art practiced by the Jews. (1 Hall. Lit. Hist. 205.) The Jews believed that Moses received in Sinai not only the law, but also certain unwritten principles of interpretation, called "cabala" or "tradition," which were handed down from father to son, and

in which mysterious and magical powers were supposed to reside. (2) A junto or private meeting of small parties. This name was given to that ministry in the reign of Charles II., formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word "cabal;" hence the appellation. For a succinct account of the Cabal Ministry, see 2 Hall. Cons. Hist. 374.

CABALLERIA.—In Spanish law, an allotment of land acquired by conquest, to a horse soldier. It was a strip one hundred feet wide by two hundred feet deep. The term has been sometimes used in those parts of the United States which were derived from Spain. See 12 Pet. (U. S.) 444 n.

CABIN, (of a ship). 109 Mass. 424.
(of a vessel, how far a ship). 1 Root (Conn.) 63; 5 Day (Conn.) 133.

CABINET.—

§ 1. The select or secret council of a prince or executive government; so called from the apartment in which it was originally held.—*Webster*.

§ 2. In the United States, no cabinet is expressly provided for by the constitution, but, by usage, the president appoints heads, or "secretaries," as they are commonly called, to preside over the several departments of the executive branch of the government. These departments are named respectively the department of state, of the treasury, of the interior, of war, of the navy, of justice, presided over by the attorney-general, and the postmaster-general's department. These heads or secretaries are cabinet officers, and, collectively, constitute the cabinet of the president. They are his advisers, and he is empowered by the constitution (Art. II. § 2,) to call upon them, at his pleasure, for written opinions on subjects relating to the transaction of business in their respective departments. As a body they are merely an advisory board and their conclusions are not binding either upon the president, or upon themselves when acting individually in their several departments. Individually, they are empowered to appoint numerous "heads of bureaus" and inferior officers to assist in transacting the business of their respective departments. The head of the so-called "department of agriculture," is not a member of the cabinet.

§ 3. In England, where the maxim,

"the king can do no wrong" prevails, the sovereign is not responsible, and the cabinet (which is a select body of the privy council) (*q. v.*) is. The members of the cabinet, called the ministers, are chosen by the sovereign, or rather the premier or prime minister is, and he selects the others—forms a government as it is termed—from members of either house of parliament. If displeased, the sovereign may dismiss the ministers, but the practice is for them to resign when unable to obtain for their measures a majority in the house of commons.

CABINET, (what will not pass under the head of, in a will). 1 Cox Ch. 77.

CABINET COUNCIL.—A private and confidential assembly of the most considerable ministers of state, to concert measures for the administration of public affairs; first established by Charles I.—*Wharton*.

CABINET OF CURIOSITIES, (in a will). 8 Com. Dig. 469.

CABLISH.—Brushwood, according to the writers of the forest laws. But Spelman thinks it more properly windfall-wood, because it was written of old *cadibulum*, from *cadere*; or, if derived from the French *chablis*, it also must be windfall-wood.—*Jacob*.

CACHEPOLUS, or **CACHEREL-LAS.**—An inferior bailiff, or catchpole.—*Jacob*.

CACICAZGOS.—In Spanish-American law, property entailed on the *caciques*, or heads of Indian villages, and their descendants. (Schmidt's Civ. Law 309).—*Burrill*.

CADASTRE, or **CADASTU.**—An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 12 Pet. (U. S.) 428 n.

CADERE.—(1) To cease, end, fall, fail, terminate; formerly used in such phrases as—*cadit actio*, the action fails; *cadit assisa*, the assize abates; *cadit breve*, the writ fails; *cadit questio*, there is an end of the question; *cadit warrantia*, the warranty fails. (2) To become, or be changed to, as *cadit assisa in juratum*, the assize has been changed into a jury.

CADET.—(1) A youth under tuition and drill with a view to his becoming an army or navy officer. U. S. Rev. Stat. §§ 1309, 1512.

(2) The younger son of a gentleman; particularly applied to a volunteer in the army, waiting for some post.—*Jacob*.

CADUCA.—In the civil law, (1) An escheat; an inheritance which goes not to the

heir but to the State. (2) Property of any description which descends to the heir. (3) The lapse of a testamentary provision.

CÆSARIAN OPERATION.—A surgical operation whereby the fœtus, which can neither make its way into the world by the ordinary and natural passage, nor be extracted by the attempts of art, whether the mother and fœtus be yet alive, or whether either of them be dead, is, by a cautious and well-timed operation, taken from the mother, with a view to save the lives of both, or either of them. (Consult 2 Tayl. Med. Jur. (2 edit.) 216 *et seq.*) If this operation be performed after the mother's death, the husband cannot be tenant by the curtesy; since his right begins from the birth of the issue, and is consummated by the death of the wife; but if mother and child are saved, then the husband would be entitled after her death.—*Wharton*.

CÆTERIS TACENTIBUS.—The others being silent. A phrase found in some of the old reports, signifying that the judges other than the one whose opinion is reported, expressed no opinion.

CÆTERORUM.—See ADMINISTRATION, § 3.

CAIRNS'S ACT (so called from the solicitor-general by whom it was introduced) is the Act 21 and 22 Vict. c. 27, enabling the Court of Chancery to award damages in addition to or in substitution for an injunction or decree for specific performance, *e. g.* in a suit to restrain interference with ancient lights. The jurisdiction given by the act ought not to be exercised in such a way as to enable one person to buy the property of another without his consent. *Per Jessel, M. R. in Krehl v. Burrell*, 7 Ch. D. 551.

CALCETUM—CALCEA.—A causey, or common hard way, maintained and repaired with stones and rubbish. *Calcearum operationes* were the work and labor done by the adjoining tenants, and *calceagium* was the tax or contribution paid by the neighboring inhabitants towards the making and repairing such common roads, from which some persons were especially exempted by royal charter.—*Kenn. Gloss.*

CALCULATED, (defined) 9 Cush. (Mass.) 170.

CALE.—In old French law, a punishment inflicted upon sailors by plunging them into the water and drawing them out again. Supposed to resemble the modern keel-hauling.—*Burrill*.

CALEFAGIUM.—A right to take fuel yearly.—*Blount; Cowel*.

CALENDAR.—

§ 1 The established order of the division of time into years, months, weeks and days; also a register or table of such divisions—an almanac.

§ 2. **Court calendar.**—A list of causes ready for trial, or argument, arranged

either alphabetically by the names of the parties, or according to the preference or priority of some of the causes over the others; a "docket" (*q. v.*)

§ 3. In English criminal procedure, the calendar is a list of prisoners to be tried at the assizes or Central Criminal Court, and of the offences with which they are charged. At the end of the assizes, the clerk of assize makes out a calendar, showing the verdicts and sentences passed on the prisoners, with a blank column to be filled up by the judge in cases where any prisoner is relieved, respited, or the like. A copy of this calendar is given to the sheriff as his warrant or authority for executing the judgment against each prisoner. 4 Steph. Com. 478.

CALENDAR MONTH.—A period of time consisting of thirty days in April, June, September and November; of thirty-one days in the remainder of the months, except February, which consists of twenty-eight days, unless, in leap-year, when the intercalary day is added, making twenty-nine days. See BISSEXTILE.

CALEND.—Among the Romans the first day of every month, being spoken of by itself; or the very day of the new moon, which usually happen together. And if *pridie*, the day before, be added to it, then it is the last day of the foregoing month, as *pridie calend. Septemb.* is the last day of August. If any number be placed with it, it signifies that day in the former month, which comes so much before the month named; as the tenth calends of October is the 20th day of September; for if one reckons backwards, beginning at October, that 20th day of September, makes the 10th day before October. In March, May, July and October, the calends begin at the sixteenth day, but in other months at the fourteenth; which calends must ever bear the name of the month following, and be numbered backwards from the first day of the said following months.—*Jacob*.

CALL.—

§ 1. In conveyancing law, the designation in a survey, entry or other conveyance of land, of natural objects or landmarks, as boundaries of the land described, is denominated a "call." The courses and distances designated are also termed "calls."

§ 2. In the law of corporations.—A demand for money required for the purposes of a company or corporation. There are, in England, two kinds of calls—(1) those made in respect of the unpaid-up portions of the capital of a company, in order to raise money for carrying on its business (directors' calls); and (2) those

made to pay the debts of a company when its business is suspended by liquidation (liquidators' calls). In the case of a limited company, these latter calls cannot be made beyond the amount (if any) remaining unpaid on each share; in the case of an unlimited company, the calls depend on the amount of debts and the number of the solvent shareholders. (Lindl. Partn. 643.) In the case of companies under the Companies Acts, 1862-1880, calls due from members are specialty debts. (Act of 1862, §§ 16, 75; see COMPANY; CORPORATION.) In America the word "call" is little used in this connection, "assessment" being used in its stead to express nearly the same idea. See ASSESSMENT, § 3.

CALL, (to a clergyman). 1 Harr. (N. J.) 251; 6 Johns. (N. Y.) 85; 2 Serg. & R. (Pa.) 537.

— (upon corporate stock). 5 Eng. Railw. Cas. 47, 275; 6 Id. 1, 235; 4 Exch. 540; 16 Mees. & W. 810; 21 Wend. (N. Y.) 273.

CALL OF THE HOUSE.—A proceeding in a legislative body taken for the purpose of compelling attendance of members. A resolution is first adopted directing the attendance of the members, and then the clerk calls over the list of their names to ascertain who are absentees, in order that their attendance may be compelled or their non-attendance punished.

CALLED A LURCHER DOG, (in declaration). 15 East 458.

CALLING FORTH THE MILITIA, (under constitution). 5 Wheat. (U. S.) 64; 3 Serg. & R. (Pa.) 593.

CALLING THE JURY.—The act of the clerk in calling the names of jurors as they are taken from the wheel, until a sufficient number have answered and been accepted to sit in the cause about to be tried.

CALLING THE PLAINTIFF.—The old-fashioned term for a nonsuit (*q. v.*) (3 Bl. Com. 376.) As to calling upon a prisoner, see ALLOCUTUS.

CALLING TO THE BAR.—In English law, the conferring upon a member of one of the inns of court, of the degree or dignity of barrister-at-law.—*Holthouse.* See BAR, § 3.

CALPES.—A gift to the head of a clan, as an acknowledgment for protection and maintenance.

CALUMNIA.—(1) In old English and feudal law, a claim, or demand of a right; a challenge.—*Spel. Gloss.* (2) Calumny; a false accusation.

CALUMNIÆ JURAMENTUM.—In the old Canon law, an oath similar to the *calumniæ jusjurandum* (*q. v.*)

CALUMNIÆ JUSJURANDUM.—The oath as to calumny. This was an oath which, in former times, both parties to a suit were compelled to take in certain cases, especially divorce cases, to the effect that the suit was instituted in good faith. It was similar in some respects to the modern affidavit of merits. See AFFIDAVIT OF DEFENCE.

CALUMNIATOR.—In the civil law, one who brought a false criminal charge, knowing it to be false.

CALVIN'S CASE.—The case of Calvin v. Smith, reported 7 Co. 1. It decided that persons born in Scotland after the accession of James I. to the English crown, were natural-born subjects of England: it is hence sometimes called the "case of the *post-nati*." See ALLEGIANCE, § 1.

CALVANISM, (in a charitable bequest). 12 Mass. 561.

CAMARA.—In Spanish law, an exchequer; a treasury.

CAMBELLANUS, or CAMBELLARIUS.—A chamberlain.—*Spel. Gloss.*

CAMBIO.—Exchange.

CAMBIPARTIA.—Champerly, from *campus*, a field, and *partus*, divided.—*Spel. Gloss.*

CAMBIPARTICEPS.—A champertor.

CAMBIST.—A person skilled in exchange; a dealer in bills and notes; an exchange broker.—*Wharton.*

CAMBIUM.—Change; exchange; a bill of exchange; exchange either of lands, debts or money.

CAME BY DESCENT, GIFT OR DEVISE, (meaning immediate ancestor, donor, or deviser). 2 Pet. (U. S.) 58.

CAMERA.—A chamber or apartment; a treasure chamber, public or private; a judge's chamber; a coffer; a stipend paid by the lord to his vassal; an annuity as distinguished from a rent.—*Burrill.* See IN CAMERA.

CAMERA REGIS.—The king's chamber. An old law term applied to harbors and ports having commercial privileges; and sometimes to the city of London.

CAMERA SCACCARI.—The old name of the exchequer chamber (*q. v.*)

CAMERA STELLATA.—The star chamber (*q. v.*)

CAMERALISTICS.—The science of finance or public revenue, comprehending the means of raising and disposing of it.—*Wharton.*

CAMERARIUS.—(1) A chamberlain; a treasurer; a custodian of public moneys. (2) A bailiff, or receiver.

CAMP-FIGHT.—The trial of a cause by duel or combat of two champions in the field, for decision of some controversy. If it were a crime deserving death, the camp-fight was for life or death; if the offence deserved only imprisonment, the camp-fight was accomplished when one combatant had subdued the other, so as either to make him yield or take him a prisoner. The accused might choose another to fight in his stead, but the accuser was obliged to fight in his own person. The combatants were armed with similar weapons. (3 Inst. 221).—*Wharton.*

CAMP MEETING, (defined). 12 R. I. 137.

CAMPARTUM.—(1) A part or portion of a larger field or ground. (2) Champerty.

CAMPBELL'S ACT.—The popular name for the Act 9 and 10 Vict. c. 93, by which (as amended by Stat. 27 and 28 Vict. c. 115) an action for damages is given for the benefit of the wife, husband, parent, grandparent, step-parent, child, grandchild and step-child of a person whose death has been caused by a wrongful act, neglect or default for which he himself could, if death had not ensued, have recovered damages from the wrong-doer. (Underh. Torts 143; Campb. Negl. 20.) Similar statutes of recent enactment exist in nearly all of the States, some of which permit the personal representatives of the person killed to sue. *See* **ACTIO PERSONALIS MORITUR CUM PERSONA**; **DEATH**; **HOMICIDE**; **NEGLIGENCE**; **TORT**.

CAMPERS.—A share in land or other thing; champerty.

CAMPERTUM.—A corn-field; a field of grain.—*Blount*; *Cowel*; *Jacob.*

CAMPUS.—(1) A field; the lists in which the champions fought in the trial by battle (*q. v.*) (2) An assembly of the people, so called because they usually assembled in some open space capable of accommodating a large number of persons.

CAMPUS MAI.—An assembly of the people every year upon May-day, where they

confederated together to defend the country against all enemies.—*Jacob.*

CAN, (as soon as I, note made payable). 1 Bibb (Ky.) 396.

CAN BE DELAYED, (equivalent to "will delay"). 10 Mass. 236.

CANAL.—

§ 1. An artificial stream or ditch constructed for the transportation of merchandise in boats or ships. In the United States, canals are constructed and managed either by the State, through the agency of commissioners, or by canal companies chartered by the State; and the necessary land is acquired by the exercise of the right of eminent domain. For the law applicable to the canals of any particular State, the statutes of that State should be consulted.

§ 2. The principal English acts relating to canals, are 8 and 9 Vict. cc. 28, 42; 10 and 11 Vict. c. 94; 17 and 18 Vict. c. 31; 36 and 37 Vict. c. 48, relating to the traffic and management of canals; 24 and 25 Vict. c. 96, §§ 63 *et seq.*, relating to thefts from canals; 24 and 25 Vict. c. 97, §§ 31 *et seq.*, relating to malicious injuries to canals, and 40 and 41 Vict. c. 60 regulating the use and registration of canal-boats as dwellings.

CANAL, (toll to be collected on, by charter). 10 Pet. (U. S.) 381.

CANAL-BOAT, (vessel propelled by steam). 6 Ben. (U. S.) 115.

CANAL SHARES, (are personal property). 1 Chit. Gen. Pr. 4.

CANADA CURRENCY, (note payable in). 27 Mich. 191.

CANCEL—CANCELLATION.—**LATIN:** *cancelli*, lines drawn in the form of lattice-work.

§ 1. Literally, to cancel an instrument is to draw lines across it, or across some part of it, such as the signatures of the parties, with the intention of indicating that it is no longer in force; thus, bankers commonly cancel checks when they have been paid. A deed is usually canceled by striking out the signatures and tearing off the seal. (*See* *Shep. Touch.* 69 *et seq.*) Cancellation of a will, even by the testator, does not revoke it, unless it is accompanied by a declaration executed by the testator in the manner in which wills are required to be executed. *Shelf. R. P. Stat.* 517. *See* **ALTERATION OF WRITTEN INSTRUMENTS.**

§ 2. **In equity.**—Courts of equity frequently cancel instruments which have answered the end for which they were

created, or instruments which are void or voidable, in order to prevent them from being vexatiously used against the person apparently bound by them. Snell's Eq. 498.

§ 3. Action for cancellation of instrument.—Cancellation is sometimes directed by the judgment of a court of law. Thus, when a person has entered into a contract for the sale of land, and the purchaser refuses to pay the money, the vendor may bring an action against him to deprive him of his right under the contract; time is given by the court for payment of the money, and if the time expires without the money being paid, the contract is canceled by the decree or judgment of the court, and the vendor becomes again the owner of the estate. (*Lysaght v. Edwards*, 2 Ch. D. 506.) This is technically called a "decree or judgment for cancellation of the contract." See RESCISSION.

CANCEL, (defined). 18 Cal. 452.

—— (agreement to, how construed). 40 Barb. (N. Y.) 119.

CANCEL NOTE, (covenant to). 8 Johns. (N. Y.) 43, 54; 7 Wheel. Am. C. L. 514.

CANCELING, (instrument, effect of). Coxe (N. J.) 376.

CANCELING A DEED, (what is). 4 Conn. 550.

—— (surrender or destruction is not). 5 Conn. 262.

—— (effect of). 2 H. Bl. 259, 263.

—— (operates as a reconveyance). 1 N. H. 9; 4 *Id.* 191.

—— (does not divest property once vested). 2 Johns. (N. Y.) 87; 4 Wheel. Am. C. L. 273.

—— (estate not destroyed by). 8 Cow. (N. Y.) 75.

CANCELING A LEASE, (not a surrender of the term). 6 East 86.

CANCELING A MORTGAGE, (what is). 1 Green (N. J.) Ch. 97, 142, 239.

CANCELLARIA.—The old name of the Court of Chancery (*q. v.*)

Cancellarii Angliæ dignitas est, ut secundus a rege in regno habetur: The dignity of the chancellor of England is, that he is deemed the second from the sovereign in the kingdom. 4 Inst. 78.

CANCELLARIUS.—(1) A chancellor (*q. v.*); (2) an officer of the court who stood at the door ready to carry out the commands of the judges.—*Cowel*.

CANCELLI.—The rails or balusters inclosing the bar of a court of justice, or the communion-table; also the lines drawn on the face of a will or other writing, with the intention of revoking or annulling it.—*Wharton*.

CANDIDATE.—**LATIN**: *candidus*, white, from the custom of the Roman candidates to dress in white tunics.

A nominee; one who aspires to an office, or who is selected, or offers himself as a proper person to be elected to an office. So, also, one who seeks a nomination or an appointment, is said to be a "candidate" for such nomination or appointment.

CANDIDATE, (defined). 3 Burr. 1586, 1590.

CANDLEMAS-DAY.—A festival appointed by the church to be observed on the second day of February in every year, in honor of the purification of the Virgin Mary, being forty days after her miraculous delivery. At this festival, formerly, the protestants went, and the papists now go in procession with lighted candles; they also consecrate candles on this day for the service of the ensuing year. It is the fourth of the four cross quarter-days of the year.—*Wharton*.

CANFARA.—A trial by hot iron formerly in use in England.—*Jacob*.

CANNOT, (when means "may not"). 8 East 416.

CANNOT BE HAD, (grantors and witnesses, in statute respecting deeds). 2 Serg. & R. (Pa.) 44, 46.

CANON.—

§ 1. In ecclesiastical law, either (1) any rule of the *jus canonicum* contained in the *Decretum Gratiani*; or (2) a rule of ecclesiastical conduct promulgated by the Convocation of the Church of England, whether it has legal force or not. Thus, the canons of 1603 have no legal force. 1 Bl. Com. 83. See CANON LAW; CONVOCATION.

§ 2. A dignitary of the English church; a prebendary, or member of a chapter. 1 Bl. Com. 382; 3 Steph. Com. 67 *n.*

§ 3. **Canons of descent**.—The word is also sometimes used to denote a rule of civil law, as in the expression "the canons of descent." See DESCENT.

CANON LAW.—

§ 1. **Roman**.—A body of Roman ecclesiastical law, compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of the Holy See. About the middle of the 12th century the confusion and obscurity of the ecclesiastical law induced a monk of Bologna, called Gratianus, to codify the existing materials down to the year 1139; his work was known as the *Concordantia Discordantium Canonum*, afterwards as the *Decretum Gratiani*, and included not only the decrees, epistles, &c.,

themselves, but also a commentary of his own, known as the *Dicta Gratiani*. The subsequent decrees (*Decretales extravagantes*) (so called because they did not form part of Gratian's collection—*Decretales quæ extra Decretum vagabantur*) were collected from time to time, especially in the five *Compilationes antiquæ*, until the inconvenience of these collections led Gregorius IX. to have a new collection prepared, hence known as the *Decretales Gregorii IX.*, in five books. A sixth book (*Liber Sextus*) was added by Boniface VIII. in 1298, and another by Clement V. in 1313. The two later collections, namely, the *Extravagantes Joannis XXII.* and the *Extravagantes communes* (which were added by Joannes Chappuis to his edition of the canon law published in 1500), were not official like the preceding collections. The *Decretum Gratiani*, and the five subsequent collections together form the *Corpus Juris Canonici*. 1 Holtz. Encycl. 122 *et seq.*

§ 2. *English*.—Besides these pontifical collections, which, during catholic times, were received as authentic in England, as well as in other parts of Christendom, there is also a kind of national canon law, composed of legatine and provincial constitutions, and adapted only to the exigencies of the English church and kingdom. The legatine constitutions were ecclesiastical laws, enacted in national synods, held under legates from the popes in the reign of King Henry III., about 1220 and 1268. The provincial constitutions are principally the decrees of provincial synods of Canterbury, from the reign of Henry III. to that of Henry V., and adopted by the province of York in the reign of Henry VI. At the dawn of the Reformation, it was enacted by Stat. 25 Hen. VIII. c. 19, that a review should be had of the canon law, and that, till such review should be made, all canons, constitutions, ordinances and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And, as no such review has yet been made, upon this enactment now depends the authority of the canon law in England, while all canons made since its date have

no legal force, so far as the laity are concerned. 1 Bl. Com. 82 *et seq.*; 1 Steph. Com. 65 *et seq.* See ECCLESIASTICAL LAW.

CANON RELIGIOSORUM.—A book wherein the religious of convents had a fair transcript of the rules of their order, which were frequently read among them as their local statutes; and this book was therefore called *Regula* and *Canon*. The public books of the religious were the four following: (1) *Missale*, which contained all their offices of devotion. (2) *Martyrologium*, a register of their peculiar saints and martyrs, with the place and time of Passion. (3) *Canon*, or *Regula*, the institution and rules of their order. (4) *Necrologium*, or *Obituarium*, in which they entered the deaths of their founders and benefactors, to observe the days of commemoration of them.—*Kenn. Gloss.*

CANONICAL.—Agreeable to the canons of the church.

CANONICAL OBEDIENCE.—That duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop.—*Wharton*.

CANONRY.—An ecclesiastical benefice attaching to the office of canon.—*Holthouse*.

CANONS OF DESCENT, or OF INHERITANCE.—See CANON, § 3; DESCENT.

CANT.—In the civil law, a method of dividing property held in common by two or more joint owners. See 9 Mart. (La.) 87.

CANTEL, "seems to signify the same with what we now call lump, as to buy by measure or by the lump; but according to Blount it is that which is added above measure. Also a piece of anything, as a cantel of bread, and the like."—*Jacob*.

CANTERBURY, ARCHBISHOP OF.—The primate of all England; the chief ecclesiastical dignitary in the church: his customary privilege is to crown the kings and queens of England; while the Archbishop of York has the privilege to crown the queen-consort, and be her perpetual chaplain. The Archbishop of Canterbury has also, by 25 Hen. VIII. c. 21, the power of granting dispensations in any case not contrary to the Holy Scriptures and the law of God, where the pope used formerly to grant them, which is the foundation of his granting special licenses to marry at any place or time; to hold two livings (which must be confirmed under the great seal), and the like; and on this also is founded the right he exercises of conferring degrees in prejudice of the two universities; but although he can confer all the degrees which are taken in the universities, yet the graduates of the two universities, by various acts of parliament, and other regulations, are entitled to many privileges, which are not extended to what is called a "Lameth degree." (1

Bl. Com. 381; Phillim. Ecc. L. 32, 37, 792, 821, 1233.) The power of conferring medical degrees appears to be superseded by 21 and 22 Vict. c. 90, sch. A 10, called "The Medical Act."—*Wharton*. See ARCHBISHOP.

CANTRED.—A district comprising a hundred villages; a hundred. A term used in Wales in the same sense as "hundred" is in England.—*Cowel*; *Termes de la Ley*.

CANUM.—A duty anciently paid by the tenant to his lord, generally in produce of the land.—*Burrill*.

CAP OF MAINTENANCE.—One of the regalia or ornaments of State belonging to the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England.—*Encyc. Lond.*

CAPACITY.—A person is said to have legal capacity when he can alter his rights and duties by the exercise of his own will. Hence idiots and lunatics are said to have no legal capacity, and infants and married women have a restricted capacity: in other words, they are under disability (*q. v.*) See TESTAMENTARY CAPACITY.

CAPACITY, (testamentary, defined). 4 Wash. (U. S.) 267, 268; 1 Green (N. J.) Ch. 8, 82; South. (N. J.) 458, 677; Shelf. Lun. 39; 11 Ves. 11.

— (testamentary, proof of). 5 Johns. (N. Y.) Ch. 160; 4 Cow. (N. Y.) 216.

CAPAX DOLI.—Capable of committing crime. One who has insufficient understanding of the difference between right and wrong to render him responsible for his acts, is not *capax doli*. Thus, a child under seven years old is generally held to be *incapax doli*.

CAPE.—A judicial writ touching plea of lands or tenements; so termed, as most writs are, from that word in it, which carries the chief intention or end. This writ is divided into *cape magnum* and *cape parvum*, both of which take hold of things immovable. *Cape magnum*, or the grand cape, is a writ that lies before appearance, to summon the tenant to answer the default, and also over to the demandant. And in the Old Nat. Brev. it is defined to be, Where a man hath brought a *precipe quod reddat* of a thing touching plea of land, and the tenant makes default at the day to him given in the original writ, then this writ shall go for the king to take the land into his hands; and if the tenant come not at the day given him thereby, he loseth his land, &c. (See Reg. Jud. 1; Bract. lib. 3; tract 3 c. 1.) *Cape parvum*, or petty cape, is where the tenant is summoned in plea of land, and comes on the summons, and his appearance is recorded; if, at the day given him, he prays the view, and, having it granted, makes default, then shall issue this writ for the king.—*Jacob*.

CAPE AD VALENTIAM.—A species of *cape magnum*. See CAPE.

CAPELLA.—(1) A small building or other repository where relics of martyrs were kept. (2) A chapel, or oratory.—*Cowel*; *Spel. Gloss.*

CAPERS.—Private war vessels smaller than ordinary privateers.—*Bouvier*.

CAPIAS.—That you take. The generic name for several writs directing the person to whom they are addressed to arrest the person therein named. They are usually directed to the sheriff, and are of the kinds described in the following titles:

CAPIAS AD AUDIENDUM JUDICIUM.—In some cases it is necessary that the defendant, in a criminal prosecution, should be present in court when judgment is pronounced against him, and, therefore, if he is at large when the verdict of guilty has been given, a writ of *capias* may be issued, under the English practice, for the purpose of bringing him up to receive judgment. This writ appears to be called a *capias ad audiendum judicium*.

CAPIAS AD COMPUTANDUM.—A writ to compel the defendant, in an action of account render, after judgment of *quod computet*, to appear in person before the auditors and render his account.

CAPIAS AD RESPONDENDUM.—That you take to answer.

§ 1. At common law, a writ by which an ordinary action was commenced. The defendant was not actually arrested under it (except prior to the introduction of the practice of taking bail), but was merely required to appear and put in common bail, unless the plaintiff made affidavit that his debt exceeded £10, in which case he might be arrested and compelled to put in special bail. (See ARREST; BAIL, §§ 1-3; DISTRINGAS; VENIRE FACIAS.) This use of the writ has been virtually abolished in England by Stat. 1 and 2 Vict. c. 110, and the right to arrest on *mesne process* has been so much restricted in the several States, by statute, that although the name of the writ is still retained in some of them, it issues only in bailable actions (*q. v.*)

§ 2. In English practice, a writ which may be issued for the arrest of a person against whom an indictment for a misdemeanor has been found, in order that he may be arraigned. (4 Bl. Com. 318; Archb. Cr. Pl. 82.) In practice, however, a justice's warrant is always used (see WARRANT) except where it is desired to make the defendant an outlaw (*q. v.*)

CAPIAS AD SATISFACIENDUM, or CA. SA.—That you take to satisfy. A writ for the arrest of the defendant in a civil action, when judgment has been recovered against him for a sum of money, and has not been satisfied. The sheriff generally returns to this writ: *cepi corpus et paratum habeo*—*i. e.* that he has taken the body of the debtor, and has it ready; or that the debtor is so ill that he cannot remove him without danger to his life; or he may return *non est inventus*—*i. e.* that the debtor is not found within his bailiwick. (2 Smith Act. 282; Arch. Pr. 602.) Imprisonment for debt having been generally abolished in all except a few cases, and the right to arrest much restricted by statutes facilitating the discharge of debtors from arrest, the writ of *ca. sa.* is now comparatively rare. See ARREST; COMMITTAL; EXECUTION.

CAPIAS AD SATISFACIENDUM, (a satisfaction of the debt). South. (N. J.) 803.

CAPIAS EXTENDI FACIAS.—A writ of execution issuable in England against a debtor to the crown, and commands the sheriff to "take" or arrest the body, and "cause to be extended" the lands and goods of the debtor. (Man. Exch. Pr. 5.) It seems to be practically obsolete. See EXTENT.

CAPIAS IN WITHERNAM.—**ANGLO-SAXON:** *withernam*, a taking again; (see Schmid, Ges. gl. s. v. Nam;) the accent is on the first syllable.

A writ formerly used in cases where the defendant in an action of replevin had obtained judgment for the re-delivery of the goods, and the sheriff had returned *elongata* (*q. v.*) The *capias in withernam* commanded the sheriff to take other goods of the plaintiff to the value of the goods replevied, and deliver them to the defendant, to be kept by him until the latter goods were returned. The practice is now obsolete. Woodf. Land. & T. 481.

CAPIAS PRO FINE.—That you take for the fine. (1) An obsolete writ directing the arrest of an unsuccessful defendant in an action of tort, to compel him to pay a fine due to the king for the misdemeanor deemed to be involved in the tortious act committed. (2) *Capias pro fine* is where one who is fined to the king for some offence committed against a statute, does not discharge the fine according to the judgment, whereupon his body is to be taken by this writ, and committed to prison until he pay the fine. It is used in other cases for not making out some pleas in civil actions.—*Jacob.*

CAPIAS UTLAGATUM.—That you take the outlaw. A writ for the arrest of an outlaw. As outlawry has been abolished in civil cases, this writ is now only available in

criminal proceedings, and even in those it is rare. (See Archb. Crim. Pl. 87; also OUTLAWRY.) A general *ca. utl.* is against the person only, and commands the sheriff to arrest the defendant and produce him in court on a certain day; a special *ca. utl.* is against the person, lands and goods, and commands the sheriff not only to arrest the defendant, but also to hold an inquisition as to his goods and lands, and to take possession of them on behalf of the queen. (Chit. Pr. (12th edit.) 1312.) In criminal cases, this is also called a *capias utlagatum cum breve de inquirendo*. Grady & Scotl. 321.

CAPITA.—See PER CAPITA.

CAPITA AND PER STIRPES, (when devisees take, distinction between). 4 Wheel. Am. C. L. 442.

CAPITAL.—**LATIN:** *caput*, a head.

In political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production; but, in commerce, and as applied to individuals, it is understood to mean the sum of money which a merchant, banker or trader adventures in any undertaking, or which he contributes to the common stock of a partnership. Also, the fund of a trading company or corporation, in which sense the word "stock" is generally added to it. (McCull. Com. Dict.) As to circulating and fixed capital, see 1 Mill's Pol. Econ., b. l., c. vi.—*Wharton.*

CAPITAL, (what included in). 10 Ves. 185, 288; 13 *Id.* 363.

— (in a trust fund). 64 Pa. St. 256.
— (of a bank). 7 Blackf. (Ind.) 395; 31 Conn. 106.

— (of a banker). 5 Blatchf. (U. S.) 315; 21 Wall. (U. S.) 284.

— (of corporation, subject to taxation). 23 Barb. (N. Y.) 318, 320; 23 N. Y. 219; 18 Wend. (N. Y.) 605.

— (under Revenue Act of 1864). 5 Blatchf. (U. S.) 315; 21 Wall. (U. S.) 284.

CAPITAL CASES, (in statute conferring jurisdiction). 7 Blackf. (Ind.) 165.

CAPITAL CRIME.—An offence for which the punishment of death is provided by law.

CAPITAL LETTERS, (in turnpike act). 3 Pick. (Mass.) 342.

CAPITAL PUNISHMENT.—The punishment of death is frequently termed capital punishment; and those offences are called capital offences for which death is the penalty allotted by law. The use

of the term may probably have arisen from the decapitation which, in former times, was a common mode of executing the sentence of death, and which is prescribed in some of the statutes against traitors even now remaining in force. The extreme sentence of the law, however, has for many years been carried into effect against all offenders by hanging them by the neck. The offences which are still capital offences have, by the humane spirit of modern legislation, been recently much diminished, and latterly only included high treason, murder, rape and unnatural offences, setting fire to any king's ship or stores, the causing injury to life with intent to commit murder; burglary, accompanied with an attempt at murder; robbery, accompanied with stabbing or wounding; setting fire to a dwelling-house, any person being therein; setting fire to or otherwise destroying ships with intent to murder any person; exhibiting false lights with intent to bring ships into danger; piracy, accompanied by stabbing; and riotous destruction of buildings. But at the present day, the only capital offences punishable with death, in England, are treason and murder, all other offences formerly capital being now punishable with penal servitude for life or years, or some term of imprisonment.—*Brown*. In some of the United States, arson and burglary in the first degree, and rape are also punished capitally.

CAPITAL STOCK.—The aggregate sum represented by the shares of stock in a company or corporation; the amount subscribed to the stock by the promoters and members, upon which assessments or calls may be made, and dividends paid; the corporate fund, as distinguished from other property of the corporation.

CAPITAL STOCK, (defined). 6 Otto (U. S.) 455; 7 *Id.* 707; 8 Ga. 486; 40 *Id.* 98, 102; 17 Hun (N. Y.) 475, 476.

— (of corporations). 83 Ill. 602; 9 Abb. N. Cas. 442.

— (of railroad company, in exemption act). 30 Ark. 693, 702.

— (in act concerning corporations). 38 Cal. 300.

— (in corporate charter). 3 Zab. (N. J.) 195.

— (in revenue law). 83 Ill. 602.

— (in tax law). 52 Pa. St. 177.

CAPITALE.—A thing which is stolen, or the value of it.—*Blount*.

CAPITALE VIVENS.—Live cattle.—*Blount*.

CAPITALIS.—Chief; principal. Employed in some Latin phrases, such as—

Capitalis baro scaccarii domini regis: Chief baron of the king's exchequer.

Capitalis custos: Chief magistrate, or mayor.

Capitalis debitor: Principal debtor.

Capitalis dominus: Chief lord.

Capitalis justiciarius ad placita coram rege tenenda: Chief justice for the holding of pleas before the king, *i. e.* chief justice of the king's bench

Capitalis justiciarius banci, or de banco: Chief justice of the bench, *i. e.* the common pleas.

Capitalis justiciarius totius Angliæ: Chief justiciar, or justice of all England.

Capitalis plegius: Chief pledge.

Capitalis reditus, or redditus: Chief rent.

Capitalis terra: Head-land, or land lying at the head of other land.

CAPITANEUS.—(1) A tenant *in capite* (*q. v.*) (2) A commander either of land or naval forces. (3) A chief baron, or lord. (4) A civil or ecclesiastical magnate.

CAPITATION TAX.—A tax by head; a poll-tax. See U. S. Const. Art. I. § 9, n. 4.

CAPITE.—See IN CAPITE.

CAPITIS DEMINUTIO.—In Roman law, there were three *capita* (called the *Tria Capita*), viz., *libertas*, *civitas* and *familia*, these three constituting full civil capacity. In case a Roman lost his *familia* (*e. g.* upon acquiring another), he suffered a *minima capitis deminutio*; in case he lost his *civitas* (*e. g.* upon a *relegatio*), he suffered a *minor* or *media capitis deminutio*; in case he lost his *libertas* (and with it of course his *civitas* and *familia* also), he suffered a *maxima capitis deminutio* (*e. g.* upon being made a slave either by the civil law or by the *jus gentium*).—*Brown*.

CAPITITIUM.—A covering for the head, mentioned in Stat. 1 Hen. IV. and other old statutes, which prescribe what dresses shall be worn by all degrees of persons.—*Jacob*.

CAPITULA.—Collections of ancient laws and ordinances drawn up under heads and divisions.—*Spel. Gloss*.

CAPITULA CORONIS.—Chapters of the crown. See **CAPITULA ITNERIS**.

CAPITULA DE JUDÆIS.—Chapters or schedules relating to the Jews, given to the justices itinerant during the reign of Richard I.

CAPITULA ITINERIS.—Chapters or schedules of inquiry delivered to the justices in eyre, in behalf of the king, for their guidance on their respective circuits. They contained lists of the various crimes.

CAPITULA RURALIA.—Assemblies or chapters held by rural deans and parochial clergy within the precinct of every distinct deanery; which at first were every three weeks, afterwards once a month, and more solemnly once a quarter.—*Cowel*.

CAPITULARY.—(1) A collection of feudal laws, chiefly French, classified or divided into short chapters or heads. (2) A similar collection of ecclesiastical laws and ordinances.

CAPITULATION.—(1) The treaty which determines the conditions under which a place besieged is abandoned to the commanding officer of the besieging army. (2) An agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered.—*Wharton*.

CAPITULI AGRI.—Head-lands; lands lying at the head or upper end of furrows, &c.

Capitulum est clericorum congregatio sub uno decano in ecclesia cathedrali: A chapter is a congregation of clergy under one dean in a cathedral church. *Co. Litt.* 98.

CAPTAIN.—(1) The commander of a company of soldiers, or marines. (2) The commander of a ship, either a war ship or merchant vessel; but in the latter connection "master" (*q. v.*) is the word in most common use. (3) An officer of municipal police, commanding the police of a particular precinct.

CAPTAIN, (when includes "conductor"). *Wilberf. Stat. L.* 258.

CAPTATION.—In the French law, the act of getting the will of another under one's control.—*Bouvier*. Something similar to undue influence (*q. v.*)

CAPTATOR.—A person who obtains a gift or legacy through artifice.

CAPTION.—*LATIN:* *captio*, a taking, or seizure.

(1) An arrest, or seizure of a person or thing. (2) The history of a judicial proceeding. (*Taylor v. Clemson*, 2 A. & E., N. S. p. 1010.) Thus, in a prosecution by indictment, the record begins by a caption giving the title of the court, and stating

that the jurors on their oaths presented the facts alleged in the indictment, which immediately follows the caption. (*Archb. Cr. Pl.* 38, 124; *Pritch. Q. S.* 25.) The title of a deposition taken before a magistrate is also called the caption. *Rosc. Cr. Ev.* 71. As to captions under the old practice in chancery, *see Dan. Ch. Pr.* 654.

CAPTION, (of a judgment). 2 *Day (Conn.)* 12. — (of an indictment). 4 *Halst. (N. J.)* 365; *South. (N. J.)* 46, 167; 3 *Johns. (N. Y.) Cas.* 265; 3 *Wend. (N. Y.)* 319; 5 *Serg. & R. (Pa.)* 315; 6 *Wheel. Am. C. L.* 10, 12; 7 *Id.* 309; 3 *Tyrw.* 158.

CAPTIVES.—Prisoners of war. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him a prisoner of war, at least till his ransom be paid. 2 *Bl. Com.* 402.

CAPTOR.—*See CAPTURE*, § 5-7.

CAPTURE.—

§ 1. **Animals.**—In some cases, a mode of acquiring property. Thus, every one may, as a general rule, on his own land, or on the sea, capture any wild animal, and acquire a qualified ownership in it by confining it, or absolute ownership by killing it. 2 *Steph. Com.* 19. *See ANIMALS*, §§ 2-4.

§ 2. **In international law,** the strict rule is, that when two nations are at war with one another, the movable property of the individual subjects of each nation is liable to capture by the other. In modern times, however, this rule has generally been subject to two qualifications: (1) that the capture must be effected by persons holding a commission or authority from their government; and (2) that the property of those subjects of the enemy who are within the dominions of the other State at the time of the declaration of war, is exempt from capture, except by way of reprisals. (*Mann. L. of N.* 166 *et seq.*) The latter qualification is considered by some not to be a matter of strict right; it is provided for by treaties between the principal States of the world. (*Id.* 172.) It follows, from the first qualification, that persons seizing an enemy's property on the high seas without a commission, are guilty of piracy.

§ 3. **Booty.**—Capture is either by land or by sea. Property captured by an army on land is called "booty of war," and belongs to the sovereign; but it has long been usual to grant it to the captors as a reward for their services.

§ 4. **Prize.**—Property captured at sea (called "prize") belongs to the government if captured by a government vessel, and to the capturing vessel, either in whole or in part, if captured by a privateer. The practice of privateering having been abolished as between the principal European nations by the Treaty of Paris, questions of prize can seldom arise in Europe except in cases of capture by government ships. At the outbreak of a war requiring the services of the navy, it has been customary for the government to issue a proclamation bestowing the proceeds of maritime captures, or a large part thereof, upon the takers—*i. e.* upon the officers and crews who have made or assisted in the capture (*infra* § 5). But whether the prize has been taken by a privateer, or by one of the government ships, the rule equally applies that the property in the prize does not pass to the captors until it has been condemned by a competent Prize Court. Mann. L. of N. 476. See CONDEMNATION; PRIZE COURT.

§ 5. **Actual captors.**—Captors, whether of booty or of prize, are of two classes, actual, and constructive or joint. When a prize is taken at sea there is usually no doubt as to who is the actual captor, namely, the ship to which the prize strikes its flag. But it is important to observe, that even so, the phrase "actual captors" includes many others besides those who actually have taken part in the capture. The whole of the ship's crew may not be on board the ship at the time of the capture; or the prize may have been taken out of sight of the ship, and at a great distance from it, by the ship's tender, or by a boat's crew detached from the ship. But in all these cases it is the ship, and not a part of the ship, that is held to take the prize. The whole of the ship's crew share. In the case of booty, a similar principle is applied by drawing the line between division and division, treating the division of an army as analogous (for this purpose)

to a ship of war, so that when booty has been captured by any portion of a division, that division is, in the first instance, to be regarded as the actual captor.

§ 6. **Joint or constructive captors.**—Joint or constructive captors are those who have assisted, or are taken to have assisted, the actual captors. But it is not every kind of assistance which constitutes a joint capture; for the leaning of the courts is against claims by joint captors except in the two cases of association and co-operation; association takes place when two or more ships or divisions of an army are associated under the same immediate commander; co-operation is where the joint captors have assisted the actual captors by conveying encouragement to them or intimidation to the enemy. In the case of naval prize, the joint captor must be in sight both of the prize and the actual captor to substantiate her claim; but in cases of booty, a wider application is allowed to the term co-operation, owing to the difference between the nature of naval and military operations, and between the surface of the sea and that of the land; hence the rule of sight is inapplicable to capture on land, and each case must be judged on its own grounds, subject to the rule that services, to base a claim of joint capture, must have a direct and immediate effect in influencing the capture.

§ 7. **Conjunct capture.**—Where a capture is effected by naval or military forces in conjunction with an ally, the capture is said to be conjunct, and is divided between the allied forces. See POSTLIMINIUM.

CAPTURE, (defined). 35 Ga. 344; 6 Mass. 109; 3 Pick. (Mass.) 74; 6 Allen (Mass.) 373. — (what constitutes). 9 Cranch (U. S.) 368; 2 Pet. Adm. 309.

— (what does not amount to). Dev. (U. S.) 33, 201.

— (in marine policy). 51 Me. 465; 3 Pick. (Mass.) 70; 6 Allen (Mass.) 373.

CAPUT.—The head. (1) In the civil law, it signified a person's civil condition or status, and among the Romans consisted of three component parts or elements: *libertas*, liberty; *civitas*, citizenship; and *familia*, family. (2) At common law, the word was used in various senses, chiefly in such phrases as the following: *caput anni*, the beginning of the year; *caput baroniae*, the castle or chief seat of a baron; *caput comitatus*, the chief of a county, an earl; *caput feudi vel terræ*, the head or chief lord of lands

held by feudal tenure; *caput legis*, a head of the law; *caput loci*, the head or upper end of a place; *caput lupinum*, having the head of a wolf, a term applied to outlaws; *caput portus*, the head of a port, or town to which the port belonged; *caput principium et finis*, the head, beginning and end, the king; *caput terræ*, the upper end of a piece of ground; *caput villæ*, the chief man of a town.

CAPUTAGIUM.—Some think this word signifies head or poll-money, or the payment of it; but it is rather what we otherwise call *chevaigium* (*q. v.*)—*Jacob.*

CAPUTIUM.—A headland.

CARABAS.—In old English law, a boat or raft.

CARAT.—A weight of four grains, used in weighing diamonds.—*Webster.* A weight equal to three and one-sixth grains.—*Wharton.*

CARCAN.—A term applied in the French law, to an instrument of punishment in the nature of a pillory; also, the punishment itself.—*Bouvier.*

CARCANUM.—A prison.

CARCATUS.—Loaded; a freighted ship.

CARCEL-AGE.—Prison fees.

CARCER.—A gaol (*q. v.*) or prison (*q. v.*) The strict meaning of the term is a place of confinement or detention, and not of punishment.—*Burrill.*

Carcer ad homines custodiendos, non ad puniendos, dari debet: A prison ought to be given for the custody, not the punishment of persons. *Co. Litt.* 620.

Carcer non supplicii causa sed custodiæ constitutus: A prison is ordained not for the sake of punishment, but of ward. *Lofft* 119.

CARDINAL.—In ecclesiastical law, a dignitary of the court of Rome, next in rank to the pope.

CARDS.—Small pieces of pasteboard, generally rectangular in form, used in playing certain games.

CARDS, (in indictment for gaming). 4 *Pick. (Mass.)* 251.

— (in statute against gaming). 3 *Pick. (Mass.)* 281.

CARE.—In the law relating to the duties and liabilities of bailees, carriers, etc., the word is used with the meaning of absence of negligence (*q. v.*)

CARE, (defined). 20 *Kan.* 599, 606.

CARE AND PAINS, (in a will). 2 *Atk.* 171.

CARE AND TROUBLE, (in a will). 3 *Meriv.* 24; 12 *Ves.* 307; 2 *Ves. & B.* 294, 297.

— (legacy given for). 2 *Edw. (N. Y.) Ch.* 175.

CARE OF MY FARM, (in a will). 20 *Wend. (N. Y.)* 53.

CARE OF THE PREMISES, (in a statute). 4 *Barn. & C.* 167; and see 3 *Pa.* 56.

CARE, WANT OF, (in instruction to jury). 23 *Ill.* 380.

CARECTA (also spelled *careta*).—In old English law, a cart.

CARENA.—A term used in the old ecclesiastical law to denote a period of forty days.

CARETORIUS, or CARECTARIUS.—A carter.—*Blount.*

CAREFULLY EXAMINED AND CAUTIONED, (in deposition of witness). *Penn. (N. J.)* 960-1.

CARGO.—The load of a vessel. As used in maritime law the word is generally applied to goods alone, and not to live animals or persons on a vessel.

CARGO, (defined). 1 *Mas. (U. S.)* 127, 142; 4 *Pick. (Mass.)* 429; 9 *Metc. (Mass.)* 354, 366; 3 *Robt. (N. Y.)* 173, 182.

— (what included in). 11 *Pick. (Mass.)* 227-229.

— (when live stock is). 2 *Gill & J. (Md.)* 136, 148, 164.

— (full). 1 *Moo.* 21.

— (full and complete). 2 *Barn. & Ald.* 421; 4 *Campb.* 103; 7 *Taunt.* 272.

— (full and sufficient). *Holt N. P.* 416.

— (in a contract). 2 *Ex. D.* 15.

— (in order for goods). *L. R.* 5 *Ex.* 179.

— (in order for insurance). 2 *Gill & J. (Md.)* 136.

— (in policy of insurance). 9 *Mass.* 68; 103 *Id.* 406; 11 *Pick. (Mass.)* 227; 1 *Cai. (N. Y.)* 44; 3 *Johns. (N. Y.) Cas.* 178; 1 *Wend. (N. Y.)* 576; 6 *Wheel. Am. C. L.* 195, 200.

— (insurance on, when commences). 1 *Mas. (U. S.)* 127.

CARGO AND FREIGHT, (what included in). 4 *Pick. (Mass.)* 429.

CARGO EXPECTED TO ARRIVE, (in contract of sale). *L. R.* 5 *Q. B.* 429.

CARISTIA.—Dearth, scarcity, dearth.—*Cowel.*

CARK.—A quantity of wool, whereof thirty make a sarpler. *Stat. 27 Hen. VI. c. 2.*—*Jacob.*

CARNAL KNOWLEDGE.—A term applied to the act of the man in sexual intercourse. It is usually, but not always, confined to unlawful sexual intercourse.

CARNAL KNOWLEDGE, (equivalent to sexual intercourse). 22 *Ohio St.* 541.

— (necessary words in indictment for rape). 97 *Mass.* 59.

CARNALLY KNEW.—Technical words used in indictments for rape, and

held to be essential in order to charge the commission of that crime.

CARNO.—An immunity or privilege.—*Cowel.*

CARPEMEALS.—Cloth made in the northern parts of England, of a coarse kind, mentioned in 7 Jac. c. 16.—*Jacob.*

CARRIAGE.—(1) Any vehicle on wheels or runners used for the transportation of persons or goods. (2) That which is carried. (3) The act of carrying.

CARRIAGE, (includes what). 17 Johns. (N. Y.) 128; 19 *Id.* 444.

—— (in highway act). 46 N. H. 521.

—— (in turnpike acts). 7 Com. Dig. 535.

CARRIAGE WAY, (prescriptive right). 1 Taunt. 279.

CARRIED INTO, (in maritime statute). L. R. 5 P. C. 492.

CARRIER.—A carrier is a person who has received goods for the purpose of carrying them from one place to another for hire, either under a special contract or in the course of his business of a common carrier. A carrier who receives goods under a special contract is a bailee, and, in accordance with the general rules governing contracts of bailment, he is bound to use ordinary and average care in conveying the goods entrusted to him. *See Skaife v. Farrant*, L. R. 10 Ex. 358. *See* BAILMENT; COMMON CARRIER.

CARRIER, (common and private). 37 N. Y. 341.

CARRIER OF THE MAIL, (in U. S. Rev. Stat. § 3980). 6 Daly (N. Y.) 558.

CARRIES ON BUSINESS, (in a statute). 16 Ch. D. 488.

CARRY, (in a statute against carrying concealed weapons). 31 Ala. 387.

CARRY AWAY, (defined). 7 Gray (Mass.) 43, 45.

—— (does not imply force or violence). 3 Pa. 148.

CARRY AWAY HAY, &c., (covenant not to, how broken). 4 Wheel. Am. C. L. 34.

CARRY ON BUSINESS, (in a statute). (L. R. 3 C. P. D. 18.

CARRYING, (of stock). 100 Mass. 421.

CARRYING AWAY.—The removal or asportation of personal property, which, in the criminal law, is one of the essential elements constituting the crime of larceny.

CARRYING AWAY INFANT FEMALES.—*See* ABDUCTION.

CARRYING COSTS.—A verdict is said to carry costs when the party for whom

the verdict is given becomes entitled to the payment of his costs as incident to such verdict.—*Brown.*

CARRYING ON BUSINESS, (in license act). 52 Ala. 19.

CARRYING ON TRADE, (what is under a statute) 15 East 172.

CART.—A vehicle used for carrying heavy commodities. The term is usually applied to a carriage with two wheels, but under a statute it has been held to include four-wheeled vehicles. *See* 22 Ala. 621.

CART, (in exemption law). 22 Ala. 621; 4 Heisk. (Tenn.) 285.

—— (includes a coal wagon). 1 Smith 417.

CART CARRYING MANURE, (includes cart going for manure). Wilberf. Stat. L. 237.

CART, OR TRUCK WAGON, (in attachment act). 71 Me. 465.

CART WAY, (defined). 6 Binn. (Pa.) 512; 3 Yeates (Pa.) 362, 371.

CART-BOTE.—*See* BOTE.

CARTA.—A charter (*q. v.*) In the Spanish law, the word is used to denote a deed, a letter, or a power of attorney.

CARTA DE FORESTA.—*See* CHARTÆ LIBERTATUM.

CARTE BLANCHE.—A white card, or free permission, signed at the bottom with a person's name, and sometimes sealed, giving another person power to superscribe what conditions he pleases. Applied generally in the sense of unlimited authority being granted.—*Wharton.*

CARTELS.—(1) Agreements between States as to the exchange and ransom of prisoners during war. (Man. Int. Law 218.) (2) A written challenge openly hung up; afterwards any written challenge. *See* CHARTEL.

CARTEL-SHIP.—A vessel commissioned in time of war to exchange the prisoners of any two hostile powers; also to carry any particular proposal from one to another; for this reason, the officer who commands her is particularly ordered to carry no cargo, ammunition, or implements of war, except a signal gun for the purpose of signals.—*Encycl. Lond.*

CARTULARY.—A place where papers or records are kept.

CARUCA, or **CARUA.**—A plough

CARUCAGE.—A tax imposed on every plough for the public service.—*Spel. Gloss.*

CARUCATARIUS.—One who held lands in carriage, or plough-tenure.—*Cowel.*

CARUCATE, CARVAGE, or CARVE OF LAND.—A plough-land of 100 acres, or, according to Skene, as much land as may be tilled in a year and a day by one plough.—*Kenn. Gloss.* This quantity varies in different counties from 60 to 120 acres.—*Wharton.*

CARRICLE, or CARRACLE.—A ship of great burden.

CAS FORTUIT.—*See CASUS FORTUITUS.*

CASATA.—*See CASSATA.*

CASE.—(1) An action or suit; a cause; (2) the action of trespass on the case, as to which *see* TRESPASS; (3) a written statement of facts drawn up for decision by the court, or the opinion of counsel; (4) a case agreed on, or case stated (*q. v.*); (5) a case on appeal (*q. v.*); (6) a case reserved or a case made (*q. v.*)

CASE, (defined). 12 N. Y. 593, 596.

— (synonymous with "suit"). 2 Green (N. J.) 442; 2 Murph. (N. C.) 320.

— (in a statute). 40 Iowa 152.

— (in State constitution). 12 So. Car. 523.

— (action on). 2 Nev. & M. 834.

CASE AGREED ON—CASE STATED.—A statement of facts agreed upon by the parties, and submitted to the court, in order to obtain a decision upon the points of law involved without going through the forms of a regular trial.

CASE STATED, (should contain facts). 3 Whart. (Pa.) 143.

CASE FOR MOTION.—In English divorce and probate practice, when a party desires to make a motion, he must file, among other papers, a case for motion, containing an abstract of the proceedings in the suit or action, a statement of the circumstances on which the motion is founded, and the prayer, or nature of the decree or order desired. Browne Div. 251; Divorce Rules (1866) 147; Browne Prob. Pr. 295.

CASE ON APPEAL.—

§ 1. In American practice, especially in States having reformed codes of procedure, a printed document prepared by an appellant, containing the substance of the evidence and proceedings on the trial in the court below. It is intended to en-

able the appellate court to review the evidence and the facts, as well as to pass upon alleged errors of law. Thus, where the ground of appeal is that the verdict is against evidence, or that the damages are excessive, a case containing all the evidence must be made, for a bill of exceptions brings up for review only errors of law, and contains only so much of the evidence as is necessary to present clearly the application of the rulings excepted to. The case, as prepared by appellant, is consented to by the respondent, or its form settled by the trial judge.

§ 2. In English practice, in the House of Lords and Privy Council, (1) A statement prepared and printed by each party to an appeal, showing the facts on which he relies, and containing references to the evidence contained in the appendix (*q. v.*); the cases, therefore, correspond to some extent to the pleadings in an ordinary action, but differ from them in being prepared independently, for neither party sees his opponent's case until his own has been lodged. (House of Lords Standing Orders in Appeals; Macph. P. C. Pr. 84.) (2) A written statement by an inferior court or judge, raising a question of law for the opinion of a superior court; the principal instances of this kind are the Crown Cases Reserved (*q. v.*), and cases stated by justices (*q. v.*, and *see* APPEAL; SPECIAL CASE). (3) By Stat. 22 and 23 Vict. c. 63, any court in her majesty's dominions may remit a case to one of the superior courts in any other part of her majesty's dominions, desiring it to pronounce its opinion on a question as to the law administered by it; and by Stat. 24 Vict. c. 11, the superior courts in her majesty's dominions may remit a case to a court of any foreign State with which her majesty may have made a convention for that purpose, to ascertain the law of such State. Archb. Pr. 1462.

CASE RESERVED, or CASE MADE.—A written statement of the facts proved on the trial, drawn up and settled by the counsel for the respective parties, under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial, and could not then be satisfactorily decided, determined upon full argument before the court in banc.—*Burrill.* *See* SPECIAL CASE.

CASE STATED BY JUSTICES.—By the Stat. 20 and 21 Vict. c. 43, after the hearing and determination by a justice or justices of the peace (including metropolitan police and stipendiary magistrates) of any information or complaint under their summary jurisdiction, either party to the proceedings, if dissatisfied with the determination as being erroneous in point of law, is entitled to require the justices or magistrate to state and sign a case, setting forth

the facts and the grounds of the determination, for the opinion of a divisional court of the high court of justice. Stone Just. 225.

CASE TO MOVE FOR NEW TRIAL.—A case made by the unsuccessful party on a jury trial upon which to found a motion to set aside the verdict and obtain a new trial.

CASES, (distinguished from "causes"). 6 Abb. (N. Y.) Pr. 83; 26 Barb. (N. Y.) 218.

— (include special proceedings and equity suits). 6 Abb. (N. Y.) Pr. 83; 26 Barb. (N. Y.) 218, 221.

— (in U. S. Constitution, Art. III. § 2). Baldw. (U. S.) 394, 544; 3 Cranch (U. S.) 268; 6 Wheat. (U. S.) 264, 379; 9 Id. 887; 32 Iowa 223.

CASH.—FRENCH: *caisse*, a chest.

Money; ready money, as distinguished from securities and property convertible into money; that which circulates as money.

CASH, (defined). 1 McGloin (La.) 104; 9 Johns. (N. Y.) 120.

— (bank notes are). Amb. 68; 3 Atk. 232.

— (bank notes, when considered). 19 Johns. (N. Y.) 120, 144.

— (bank notes are not). 3 Halst. (N. J.) 172.

— (bequest of). 1 Hayw. (N. C.) 228, 232; 11 Ves. 660.

— (in contract, does not include gold dust). 1 Cal. 45.

— (in notice of sale). 13 Rich. (S. C.) Eq. 210.

— (in a will, distinction between money or). 1 Johns. (N. Y.) Ch. 238.

— (sale for, defined). 8 Vt. 255.

— (sale of land by sheriff considered a cash sale). 2 Watts (Pa.) 363.

— (synonymous with "money" and "bank notes"). 1 Burr. 457.

— (treasury notes are not). 3 Conn. 534.

— (where check credited as). 10 Wheat. (U. S.) 347.

— (receipt for note as). 5 Johns. (N. Y.) 68.

CASH ACCOUNT.—An account of moneys received and expended, the receipts being entered on the debit side, and the expenditures on the credit side.

CASH ADVANCED, (in particulars of demand). 8 Bing. 371.

CASH-BOOK.—An account book in which merchants and others keep their cash accounts (*q. v.*)

CASH HAD TO MY USE, (in state of demand in vice's court). Penn. (N. J.) 464.

CASH NOTE.—A bank note of a provincial bank or of the Bank of England. It is considered as cash for all purposes, a Bank of England note being, since 3 and 4 Will. IV. c. 98, § 6, a legal tender even for all sums above £5, excepting of course at the Bank of England itself or its branch banks.—*Brown*.

CASH NOTE, (defined). 6 Mass. 188.

— (what regarded as). 4 Mass. 245.

CASH PAYMENT, (defined). 6 Md. 37, 51.

CASH-PRICE.—The price of a thing payable at the time of sale or delivery, as distinguished from the price (generally somewhat greater) where credit is given.

CASHIER.—(1) A person entrusted with the monetary interests, or custody of the funds, of a public company, bank or other moneyed corporation, partnership or individual. (2) To "cashier" is to discharge; to deprive of office—chiefly used in military law.

CASHIER, (acts of, how considered). 8 Wheat. (U. S.) 360; 3 Wheel. Am. C. L. 479.

— (agreement, in discharge of his duties). 6 Pet. (U. S.) 51.

— (authority to indorse bills and notes). 3 Mas. (U. S.) 506; 3 Wheel. Am. C. L. 433.

— (bond of). 12 Wheat. (U. S.) 66; 14 Serg. & R. (Pa.) 405, 421.

— (responsibility of). 1 Pet. (U. S.) 46.

CASHIER COUNTERSIGNING A NOTE, (how far bank liable). 5 Wheat. (U. S.) 336.

CASHIER OF BANK ENDORSING NOTE, (held a party to the paper). 2 Hill (N. Y.) 451.

CASKS OF SPIRITS, (trover for). 2 Ld. Raym. 824.

CASSATA, or CASSATUM.—A house with land sufficient to maintain one family.—*Wharton*.

CASSATION.—In French law, (1) a making null or void of any unjust or illegal act or decision; (2) the court of last resort.

CASSETUR BILLA.—An entry made on the record in a proceeding in the mayor's court when the plaintiff withdraws his action before the defendant demands the declaration or bill. (Brand. For. Att. 109.) It is so called from being a prayer by the plaintiff that the bill may be quashed. The proceeding was also used in actions in the superior courts commenced by bill, when the plaintiff found that his action was misconceived, and wished to commence a fresh one. Tidd Pr. 683. See **CASSETUR BREVE**.

CASSETUR BREVE.—Let the writ be quashed. In the old common law practice, when the defendant in an action pleaded a sufficient plea in abatement, and the plaintiff could not deny it or demur, and did not wish to amend his declaration, he might enter on the roll a judgment that the writ be quashed, in order that he might be enabled to commence a new action. In

practice, the prayer of judgment that the writ be quashed, and award that it be so, were copied on paper, and delivered to the defendant's attorney or agent, the same as a pleading, and very often no entry was made on the roll or judgment signed. Chit. Pr. 1487.

CASSOCK, or CASSULA.—A garment worn by a priest.

CAST.—Defeated at law; condemned in costs or damages.

CAST AWAY, (a ship, effect on insurance). 4 Dall. 417.

——— (right of owner of vessel to). 1 Wash. C. C. 363.

CASTEL, or CASTLE.—A fortress in a town; the principal mansion of a nobleman.—3 Inst. 31.

CASTELLAIN.—The lord, owner or captain of a castle; the constable of a fortified house; a person having the custody of one of the crown mansions; an officer of the forest.—Bract.; Manw.

CASTELLANUS.—A castellan; the keeper, or constable of a castle.—Spel. Gloss.

CASTELLARIUM.—The precinct or jurisdiction of a castle.

CASTELLARUM OPERATIO.—Castle-work or service and labor done by inferior tenants for the building and upholding of castles of defence; towards which some gave their personal assistance, and others paid their contributions.—Wharton.

CASTIGATORY.—A certain engine of correction, otherwise called the tre-bucket, *tumbrel tymborella*, cucking-stool, scolding-school, ducking-stool, *goginstole*, and *cokestole*, corrupted from choaking-stool. It was a punishment provided for scolding women, wherein they were plunged or soured over head in the water.—Wharton. It was also called *cathedra stercoralis*, and by the Saxons *scalfing stole*, and anciently inflicted on brewers and bakers transgressing the laws, who were ducked in *stercore* (in stinking water).—Domesday Book.

CASTING VOTE.—The vote given by the chairman or president of a deliberative assembly, when the suffrages of the meeting are equal. Thus, in the house of commons, (or the house of representatives,) the speaker declares the numbers after a division, but is not required to record his own vote unless the numbers are even, and then he must vote one way or the other, in order that the house may come to some decision upon the question which has been put from the chair. It is a difficult and delicate office to give an

opinion under such circumstances, especially when it is the duty of the speaker to withdraw himself as much as possible from the contentions of parties; and, therefore, when the question relates to the stage of a bill—as for the second reading, for instance—it is usual for him to vote for the “ayes,” in order to give the house an opportunity of reconsidering the bill in a future stage. In committees, some misconception appears to have existed as to the precise nature of the chairman's right of voting. In 1836 the house of commons was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and afterwards, when the voices were equal, of giving a casting vote as chairman, and that such practice had of late years prevailed in some select committees; when it was declared by the house that, according to the established rules of parliament, the chairman of a select committee can only vote when there is an equality of voices. (91 Comm. Jour. 214.) This error was very probably occasioned by the practice of election committees, which was, however, confined to them, and only existed under the provisions of acts of parliament.—Wharton. In the United States the president of the senate has no vote unless there is a tie, in which case he casts a casting vote.

CASTING VOTE, (in statute relative to religious corporations). 48 Barb. (N. Y.) 603.

CASTLE-YARD, or CASTLE-WARD.—A form of tenure by knight-service, the duty of persons holding land by such a tenure being “to ward a tower of the castle of their lord, or a door or some other place of the castle, upon reasonable warning, when their lords hear that the enemies will come, or are come in England.” Litt. § 111; Co. Litt. 82b. See KNIGHT'S SERVICE; TENURE.

CASTRATION.—The act of depriving of the testicles. When done to a man maliciously, it is mayhem, and punishable in the United States by fine and imprisonment. In the old English law, it was punished by similarly depriving the offender, and the civil law punished it with death.—Bovier.

CASTRUM.—In the Roman law, a camp in old English law, a castle.

CASU CONSIMILI.—A writ of entry, granted where a tenant by the curtesy, or tenant for life, alienated in fee, or in tail, or for another's life, and was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's lifetime.—*Termes de la Ley*.

CASU PROVISO.—An obsolete writ of entry, given by the Stat. of Gloucester, c. 7, where a tenant in dower alienated in fee, or for life, &c., and it lay for him in reversion against the alienee. Fitz. N. B. 205.

CASUAL.—That which happens accidentally; or is brought about by causes unknown or as to which nothing is suggested; without reason, in a legal point of view.—*Abbott*.

CASUAL EJECTOR.—The nominal defendant, Richard Roe, in an action of ejectment is so called, because by a legal fiction he is supposed casually, or by accident, to come upon the land or premises, and turn out the lawful possessors. See EJECTMENT.

CASUAL EVIDENCE.—A phrase used to denote (in contradistinction to "pre-appointed evidence") all such evidence as happens to be adduceable of a fact or event, but which was not prescribed by statute, or otherwise arranged beforehand to be the evidence of the fact or event.—*Brown*.

CASUAL PAUPER.—A poor person who, in England, applies for relief in a parish other than that of his settlement. The ward in the work-house to which they are admitted is called the "casual ward."

CASUAL POOR, (defined). 2 Harr. (N. J.) 405.

CASUALTIES OF SUPERIORITY.—In the Scotch law, certain emoluments going from the tenant to the superior lord; called casualties, because depending upon uncertain events, as opposed to the feu-duty or rent, which was payable at fixed and stated times.—*Bell Dict.*

CASUALTIES OF WAR, (in life insurance policy). 48 N. Y. 34.

CASUALTY.—An accident (*q. v.*)

CASUALTY, (unjust condemnation is). 2 Johns. (N. Y.) Cas 127, 160.

CASUS.—(1) A case at law; a cause of action. (2) An event or occurrence; a circumstance, or combination of circumstances; a chance.

CASUS BELLI.—An occurrence giving rise to, or justifying war.

CASUS FÆDERIS.—A case stipulated by treaty, or which comes within the terms of a compact.

CASUS FORTUITUS.—An inevitable accident, occasioning a loss which could not have been prevented by human effort or sagacity. (3 Kent Com. 216, 300.) Such an event excuses a carrier or ship-owner from liability for losses occurring during transportation. See ACCIDENT; ACT OF GOD.

Casus fortuitus non est sperandus, et nemo tenetur devinare: A fortuitous event is not to be expected, and no one is bound to foresee it. 4 Co. 66.

Casus fortuitus non est supponendus: A fortuitous event is not to be presumed.

CASUS MAJOR.—An extraordinary or unusual casualty, such as fire or shipwreck. Story Bailm. § 240.

CASUS OMISSUS.—A case unprovided for by statute, in which event the common law prevails.

Casus omissus et oblivioni datus dispositioni communis juris relinquitur: A case omitted and consigned to oblivion is left to the disposal of the common law. 5 Rep. 38.

CAT.—(1) The master of a ship, freighted with goods, which are the subject of depredation by rats, is bound to have cats on board, or he cannot charge the insurer. (2) The instrument with which criminals are flogged. It consists of nine lashes of whipcord tied on to a wooden handle.

CATALLA.—Chattels. The word, among the Normans, primarily signified only beasts of husbandry, or, as they are still called, "cattle;" but, in a secondary sense, the term was applied to all moveables in general, and not only to these, but to whatever was not a fief or feud. 1 Steph. Com. (7 edit.) 280.

Catalla juste possessa amitti non possunt: Chattels justly possessed cannot be lost.—*Jenk. Cent.* 28.

CATALLA OTIOSA.—(1) Inanimate goods and chattels, as distinguished from animals. (2) Idle or unworked animals, as distinguished from beasts of the plow; called also *animalia otiosa*.

Catalla reputantur inter minima in lege: Chattels are considered in law among the least things.—*Jenk. Cent.* 52.

CATALLACTICS.—The science of political economy.

CATALLIS CAPTIS NOMINE DISTRICTIONIS.—An obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted

the taking of doors, windows, &c., by way of distress.—*O. N. B.* 66.

CATALLIS REDDENDIS.—An obsolete writ that lay where goods delivered to a man to keep till a certain day were not, upon demand, redelivered at the day.—*Reg. Orig.* 139.

CATALLUM.—A chattel. Most frequently used in the plural form, *catalla* (*q. v.*)

CATALS.—Goods and chattels. *See* **CATALLA.**

CATANEUS.—A tenant *in capite* (*q. v.*)

CATAPULTA.—A warlike engine to shoot darts; a cross-bow.

CATASCOPIUS.—An archdeacon.—*Du Cange.*

CATCHING BARGAIN.—A bargain for a loan or payment of money made on oppressive, extortionate, or unconscionable terms, between a person having money and another person having little or no property immediately available, but having property in reversion or expectancy. Relief against the unreasonable part of such a bargain is generally granted to the borrower. (*Earl of Chesterfield v. Janssen*, 2 Ves. Sr. 125; 1 White & T. Lead. Cas. 483; *Earl of Aylesford v. Morris*, L. R. 8 Ch. 484; *Poll. Cont.* 529. *See* **EXPECTANT HEIR.**) Formerly, the rule was, that mere inadequacy of price was a sufficient ground for rescinding a sale or other dealing with a reversion, but this rule has been abolished, and it is now a question in each case, whether there has been fraud or unfair dealing. *Stat.* 31 and 32 Vict. c. 4.

CATCHING BARGAINS, (what are). 1 Atk. 301–356.

CATCHINGS, (in policy of insurance on whaling vessel). 1 Story (U. S.) 603; 4 Law Rep. 297.

CATCHLAND.—Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of pre-occupation, enjoys them for that year.—*Cowel.*

CATCHPOLE.—A sheriff's officer or bailiff (*q. v.*)

CATER COUSIN.—According to Blackstone, a corruption of *quater cousin*.—*Bl. Law Tr.* 6.

CATHEDRAL.—In ecclesiastical law, (1) a tract set apart for the service of the church.—*Bouvier.* (2) The church of the bishop, or principal church of the diocese.

CATHOLIC CREDITOR.—In the Scotch law, a creditor whose debt is secured on all or several distinct parts of the debtor's property.—*Bell Dict.*

CATONIANA REGULA.—In the Roman law, the rule which is commonly expressed in the maxim, *Quod ab initio non valet tractu temporis non convalebit*, meaning that what is at the beginning void by reason of some technical (or other) legal defect will not become valid merely by length of time. The rule applied to the institution of *haeredes*, the bequest of legacies, and such like. The rule is not without its application also in English law; *e. g.* a married woman's will (being void when made) is not made valid merely because she lives to become a widow.—*Brown.*

CATTLE, (in a statute). 47 Ill. 462; L. R. 9 Ex. 176.

—— (in statute punishing trespasses by). 2 Sawy. (U. S.) 148.

—— (in penal statute). 1 Bl. Com. 88; 2 Russ. Cr. L. 498.

—— (in estray law). 27 Tex. 726.

—— (in exemption law). 48 Me. 410.

—— (in indictment). 1 Leach C. C. 72.

—— (includes what). 2 Sawy. (U. S.) 148.

—— (includes horses). 2 W. Bl. 721; L. R. 4 Q. B. 582.

—— (includes horses and mares). L. R. 4 Q. B. 582.

—— (includes horses, mares and colts). 2 East P. C. 1076; 1 Leach C. C. 72; 2 W. Bl. 721.

—— (includes geldings). 1 Lew. 229.

—— (includes mules and asses). 47 Ill. 462.

—— (includes sheep and swine). 21 Wall. (U. S.) 294; 1 Russ. & Ry. 77.

—— (does not include buffaloes). 22 Mo. 458.

CATTLE GATE.—The customary right to pasture cattle on another's land. *See* 34 Eng. L. & Eq. 511.

CATTLE INSURANCE SOCIETIES.—Societies established and registered under the Friendly Societies Act, 1875, for insurance against loss of neat cattle, sheep, lambs, swine and horses by death from disease or otherwise. (*Friendly Soc. Act*, 1875, c. 8, § 2.) In their constitution and management, such societies resemble friendly societies (*q. v.*) They were introduced during the panic caused by the cattle plague of 1866. Fourth Report of Friendly Soc. Comm. cxlix.; Davis Friend. Soc. 57.

CAUDA TERRÆ.—A land's end, or the bottom of a ridge in arable land.—*Cowel.*

CAUSA.—A cause (*q. v.*) or reason; an action or suit pending; a consideration, or condition of a contract. In the ablative case, by reason of. The word is used chiefly in the phrases given below.

CAUSA CAUSANS.—The immediate cause; the last link in the chain of causation.

CAUSA DATA ET NON SECUTA.—Consideration given and not followed. The name of an action in the civil law, brought to recover a thing given, provided a certain event should happen, which event did not happen.—*Burrill*.

Causa et origo est materia negotii: The cause and origin is a material part of a thing. 1 Co. 99.

CAUSA JACTITATIONIS MARITAGII.—A form of action which anciently lay against one who boasted or gave out that he or she was married to the plaintiff. 3 Bl. Com. 93.

CAUSA MATRIMONII PRÆLOCUTI.—A writ which lay where a woman gave lands to a man in fee-simple, &c., to the intent that he should marry her, and he refused to do so in any reasonable time, being thereunto required.—*Reg. Orig.* 66. Abolished by 3 and 4 Will. IV. c. 27.—*Wharton*.

CAUSA MORTIS.—In prospect of death. See DONATIO MORTIS CAUSA.

CAUSA PROXIMA.—The same as *causa causans* (*q. v.*)

Causa proxima, non remota spectatur: The immediate, not the remote cause is to be regarded.

CAUSA REI.—Accessory or appurtenant things. Things which would have gone along with something withheld.—*Du Cange*.

CAUSA SCIENTIÆ PATET.—The reason of the knowledge is obvious. A phrase used in depositions of witnesses in the Scotch practice.

Causa vaga et incerta non est causa rationabilis: A vague and uncertain cause is not a reasonable cause. 5 Co. 57.

CAUSAM NOBIS SIGNIFICES QUARE.—A writ addressed to a mayor of a town, &c., who was by the king's writ commanded to give seizin of lands to the king's grantee; on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty.—*Blount; Cowel*.

CAUSARE.—To cause. In old English and civil law, to litigate; to conduct a cause.

CAUSATOR.—A litigant; the manager of another's suit, or cause.

CAUSE.—

§ 1. The different meanings of cause are: in the civil law, consideration or motive; in pleading, reason or motive; in practice, a suit or action, any question, civil or criminal, contested before a court of justice.—*Bouvier*.

§ 2. In England, before the Judicature Act, 1873, cause was the generic term for ordinary civil proceedings, whether at law or in equity, and therefore included actions and suits, but not statutory proceedings in equity, commenced by petition, motion, summons, &c., which were and are known as "matters" (*q. v.*) Since the judicature acts came into operation, the word "cause" has practically been superseded by "action" (*q. v.*)

§ 3. In the ecclesiastical courts, causes are divided into plenary and summary. "Plenary causes are those in which the order and solemnity of the law is exactly to be observed, so that if there be the least infringement or omission of that order, the whole proceedings are annulled; and in these there must be a contestation of suit, a term to propound all things, and a term to conclude. Summary causes are those in which such order is dispensed with." 3 Rog. Ecc. L. 716; *Martin v. Mackonochie*, 3 Q. B. D. 755; 4 *Id.* 697. See LITIS CONTESTATIO.

CAUSE, (distinguished from "case"). 18 Conn. (App.) 10.

— (in a statute). 85 Ill. 155.

— (in act conferring jurisdiction). 1 Abb. (U. S.) 28, 33.

— (as used in the civil law). 1 La. Ann. 192.

CAUSE-BOOKS.—Books kept in the central office of the English Supreme Court, in which are entered all writs of summons issued in the office. Rules of Court, v. 8.

CAUSE-LIST.—An official list of actions, demurrers, petitions, appeals, &c., set down for trial or argument in open court; similar to the American "calendar" or "docket" (*q. v.*)

CAUSE OF ACTION.—

§ 1. The fact or combination of facts which gives rise to a right of action. Thus, in the case of a simple tort, (*e. g.* an assault or trespass,) the cause of action is the wrongful act; in the case of a breach of contract, the cause of action consists of two things, the making of the contract and breach of it, and each of these may be more or less complicated. (*Dicey Part. 6.*) The phrase is of importance chiefly with reference to the statutes of limitation and the jurisdiction of certain courts. Thus, if A. incurs a debt while he is abroad, the cause of action is not complete, and, therefore, the statute of limitations does not begin to run until he brings himself within the jurisdiction of the courts. (*Douglass v. Forrest*, 4 Bing. 686.) Again, the jurisdiction of a court is frequently limited to cases where the cause of action arises within a certain district or county. Here the phrase may

mean either the cause of action in the proper sense of the word, (called, for distinction, the "whole cause of action,") or the act on the part of the defendant which completes the cause of action, *e. g.* the breach of a contract

§ 2. Cause of action sometimes means a person having a right of action. Thus, where a legacy is left to a married woman, and she and her husband bring an action to recover it, she is called in the old books the "meritorious cause of action." *Rose v. Bowler*, 1 H. Bl. 108.

CAUSE OF ACTION, (defined). 83 N. Y. 160; L. R. 8 C. P. 107.

— (what is). 3 Binn. (Pa.) 280, 284.

— (synonymous with "right of action").

26 How. (N. Y.) Pr. 501, 507.

— (distinguished from "chase in action").

10 How. (N. Y.) Pr. 1.

— (in a code of procedure). 1 Civ. Pro. 290.

— (in a statute). 2 Green (N. J.) 260.

— (in act defining jurisdiction). 4 Robt. (N. Y.) 671, 672.

— (in procedure act). L. R. 6 Ex. 46;

L. R. 7 Q. B. 573.

— (on a Scotch judgment). 4 Bing. 686.

— (under statute of limitations). 5 Barn. & Ald. 213.

— (when arises, under contract). 3 Johns. (N. Y.) 137.

— (when considered to have accrued). 1

Chit. Gen. Pr. 765.

— (within jurisdiction of justice of the peace). 17 Serg. & R. (Pa.) 371.

CAUSE OR MATTER, (in a statute). 36 Wis. 558.

CAUSE TO BE DONE, (in a statute). 1 Green (N. J.) 99.

CAUSED GOODS TO BE SEIZED, (in state of demand in justice's court). South. (N. J.) 107.

CAUSES, (civil and criminal). 1 Abb. (U. S.) 28, 33.

CAUSES AND SUITS, (in a statute). 1 Hen. & M. (Va.) 515.

CAUSES CÉLÈBRES.—Celebrated cases. A work containing reports of the decisions of interest and importance in French courts in the 17th and 18th centuries. The first series, in 22 vols., is by Gayot de Pitival; the second, called the *Nouvelles Causes Célèbres*, in 15, by Des Esarts. The term (in the singular) is applied to any cause of great interest and importance.

CAUSES TO PAY, (in a covenant). 1 Str. 231.

CAUSIDICUS.—In the civil law, a pleader; one who argued a cause *ore tenus*.—*Burrill*.

CAUSING AND OCCASIONING, (in an indictment). 3 Barn. & Ad. 184.

CAUSING APPRENTICE TO ABSCOND, (indictment will not lie for). 6 Mod. 99, 100.

CAUSING POISON TO BE TAKEN, (what constitutes). 4 Carr. & P. 369.

CAUTIO.—In French, civil and Scotch law, security; either for the performance of some act, in the nature of bail, or a pledge of goods.

CAUTIO FIDEJUSSORIA.—See CAUTION, § 4.

CAUTIO JURATORIA.—See CAUTION, § 4.

CAUTIO PIGNORATITIA.—See CAUTION, § 4.

CAUTIO PRO EXPENSIS.—Security for costs.

CAUTIO USUFRUCTUARIA.—Security given by a tenant for life against the commission of waste or other injury to the property.

CAUTION—CAUTIONER.—

§ 1. In English real property law.—By the Land Transfer Act, 1875, regulating the registration of land, any person interested under any unregistered instrument, or interested as a judgment creditor, or otherwise howsoever, in any land or charge registered in the name of any other person, may lodge a caution with the registrar to the effect that no dealing with such land or charge be had until notice has been served on the cautioner or person who has lodged the caution. § 54.

§ 2. Before registration.—And by section 60 of the same act, any person claiming such an interest in any land not already registered, as entitles him to object to any disposition thereof being made without his consent, may lodge a caution with the registrar to the effect that the cautioner is entitled to notice of any application for the registration of the land.

§ 3. Effect.—A caution on land is like a *distringas* (*q. v.*) on stock; it gives the cautioner no interest in the land (§ 64), but merely entitles him to a notice, so as to enable him to take proceedings (*e. g.* obtain an injunction or issue an execution) before any dealing with the land, by which his right might be barred, can take place. Cautions, like *distringases*, will probably be used chiefly by *cestuis que trust*, to prevent unauthorized dealings with the land by their trustees. See CAVEAT; DISTRINGAS; INHIBITION; RESTRICTION.

§ 4. In ecclesiastical law, a caution is a security for the performance of a duty, and is said to be of three sorts: (1) *cautio fidejussoria*, as where the person binds himself with sureties to do something; (2) *cautio pignoratitia* or *realis*, as where he engages goods or mortgages land for the performance; and (3) *cautio juratoria*, where he takes a corporal oath to perform the duty. 4 Phillim. Ecc. L. 1414; Gibs. Cod. 1063.

CAUTIONARY.—In the Scotch law, an instrument in which a person binds himself as surety for another.

CAUTIONE ADMITTENDA.—A writ which lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future.—*Reg. Orig.* 66.

CAUTIONER.—(1) A surety; a bondsman. (2) One who files a caution (*q. v.*)

CAUTIONNEMENT.—In French law, the same as becoming surety in English law.

CAVEAT—CAVEATOR.—

§ 1. **In patent law.**—A caveat is a notice filed, or entry made in the books of a government office, registry or court, to prevent a certain step being taken without previous notice to the person filing or entering the caveat (sometimes called the caveator). Thus, where a person wishes to prevent the granting of letters patent, to any one else, for an invention which he is perfecting, he files a caveat at the patent office, which entitles him (for one year) to notice of any application for a patent for the invention described in the caveat. A caveat may be renewed from year to year by paying a fee of ten dollars.

§ 2. **In probate practice,** a caveat is entered by a person who wishes to oppose the probate of a will, or the issue of letters of administration, and has a sufficient interest to enable him to do so. It is a notice to the proper officer or court requiring them to let nothing be done in the goods of the deceased, *i. e.* to let no grant be issued, unknown to the caveator.

§ 3. **Caveat against arrest.**—In English admiralty practice, where the owner of a ship, or cargo, &c., knows that an action is about to be instituted, and wishes to avoid the inconvenience of his property being arrested, he may enter a caveat against the issue of a writ of summons, on filing an undertaking to enter an appearance and give bail in any action which may be instituted against the property; if, notwithstanding the caveat, a person causes the property to be arrested, without good reason, he is liable to be condemned in costs and damages. *Wms. & B. Adm.* 197.

§ 4. **Caveat against release.**—The Admiralty Court Rules, 1859, provide that where a solicitor desires to prevent the release of any property under arrest, he shall file in the registry a præcipe, and thereupon a caveat against the release of the property shall be entered in the caveat release book, so as to prevent the release of the property without notice to him. A person entering a caveat without sufficient reason is liable for costs and damages. (*Wms. & B. Adm.* 196; *Rosc. Adm. Pr.* 117.) It is to be remarked that the Rules of Court under

the Judicature Act contained some provisions on this subject (*v.* 12), which were afterwards repealed by the Rules of December, 1875.

§ 5. **In ecclesiastical practice,** a caveat is entered in a spiritual court, to prevent a license, dispensation, faculty, institution, or the like, from being granted without the knowledge of the party who enters it. *Phillim. Ecc. L.* 1279.

CAVEAT, (in a statute). 9 *Phil. (Pa.)* 141.

CAVEAT EMPTOR.—Let the buyer beware.

§ 1. **In sales of chattels.**—A maxim employed in the law to signify that when a buyer of goods has required no warranty, he takes the risk of quality upon himself, and has no remedy if he chooses to rely on the bare representation of the vendor, unless he can show that representation to be fraudulent. (*Benj. Sales* 498.) To this rule there are many exceptions. Thus, if a chattel is made or supplied to the order of the purchaser, there is an implied warranty that it is reasonably fit for the purpose for which it is ordinarily used, or for the special purpose intended by the buyer, if that purpose was communicated to the vendor. (*Id.* 525.) It has not yet been decided, in England, whether on a sale of an ascertained specific chattel by an innocent vendor, he thereby warrants the title to it, though it is clear that if he knows he has no title, and conceals that fact from the buyer, he is liable for fraud. (*Id.* 511.) There are, however, numerous decisions in the United States, that on every such sale there is an implied warranty of title, if the thing sold is in the possession of the vendor at the time of the sale. *See WARRANTY.*

§ 2. **In sales of real property,** the purchaser can only be relieved, either at law or in equity, on account of defects in, or incumbrances upon, the property purchased, where the covenants in his deed afford the right of protection, unless fraud or false representation on the vendor's part be shown.

CAVEAT EMPTOR, (defined). 124 *Mass.* 431; 125 *Id.* 166; 126 *Id.* 10; 1 *Serg. & R. (Pa.)* 52; 3 *Yeates (Pa.)* 534.

— (explained). 5 *N. Y.* 73, 81.
— (rule as to). 7 *Halst. (N. J.)* 333; 3 *Pa.* 447; 2 *Munf. (Va.)* 314; 4 *Rand. (Va.)* 8; 1 *Wash. (Va.)* 41; 2 *Id.* 69, 70.
— (when maxim applies). 20 *Johns. (N. Y.)* 196; 11 *Wend. (N. Y.)* 81; 12 *Id.* 574; 14 *Id.* 35; 17 *Id.* 275.

CAVEAT EMPTOR, (when *maxim* fails to apply). 9 Wend. (N. Y.) 28.

— (in judicial sale). 58 Ala. 117; 3 Watts (Pa.) 490; 8 Wheel. Am. C. L. 348, 350.

— (in real property law). 56 Ala. 473; 2 Dall. (U. S.) 91.

— (as applied to the quality of land). 2 Day (Conn.) 123, 136.

— (in sale of land by sheriff). 5 Serg. & R. (Pa.) 225; 9 *Id.* 156; 6 Watts (Pa.) 140.

CAVEAT VENDITOR, (explained). 18 Wend. (N. Y.) 449, 453.

CAVEAT VIATOR, (explained). 10 Exch. 771, 774.

CAVERS.—Offenders relating to the mines in Derbyshire, who are punishable in the *Berghmote* or Miners' Court.—*Jacob*.

CEAP.—A bargain; anything for sale; a chattel; also cattle, as being the usual medium of barter. Sometimes used instead of *ceapgild* (*q. v.*)—*Wharton*.

CEAPGILD.—Payment in cattle; market price; a species of ancient forfeiture.—*Spel. Gloss.*

CEASE, (in a legacy). Coop. Ch. 145.

CEASED TO BE THEREON, (in a statute concerning schools). 63 Me. 189.

CEDE.—To assign or transfer. Generally used of transfers between states or governments. See **CESSION**.

CEDE, (in a will). 1 Harr. (N. J.) 181.

CEDENT.—A Scotch term for an assignor.

CEDO, (in Mexican grant). 26 Cal. 88.

CEDULA.—(1) A schedule; a written obligation to pay money under private signature. (2) A citation affixed to an absconder's door notifying him to appear and answer the charge made against him.—*Bouvier*.

CEDULE.—In the French law, a note in writing.—*Burrill*.

CELATION.—Concealment of pregnancy or delivery.—*Dunglison Med. Diet.*

CELDRA.—A chaldron; a grain measure.

CELEBRATE, (a marriage). 6 Halst. (N. J.) 19.

CELIBACY.—*LATIN*: *cælibatus*.

An unmarried or single state of life.

CELLAR, (in a statute). L. R. 9 Q. B. 42.

CELLERARIUS.—A butler in a monastery; sometimes in universities called "manciple" or "caterer."—*Wharton*.

CEMETERY.—*GREEK*: *κοιμητήριον*, from *κοιμάω*, to set to sleep.

A place of burial, differing from a church-yard by its locality and incidents;

by its locality, as it is separate and apart from any sacred building used for the performance of divine service; by its incidents, that inasmuch as no vault or burying-place in an ordinary church-yard can be purchased for a perpetuity, in a cemetery a permanent burial-place can be obtained. See **BURIAL**, § 3.

CEMETERY, (in act defining misdemeanors). 9 Ind. 172.

— (in general statutes of Massachusetts). 103 Mass. 104.

CENDULÆ.—Small pieces of wood laid in the form of tiles to cover the roof of a house; shingles.—*Cowel*.

CENEGILD.—An expiatory mulct paid by one who killed another, to the kindred of the deceased.—*Spel. Gloss.*

CENELLÆ.—Acorns from the oak.

CENNINGA.—Notice given by a buyer to a seller that the thing sold was claimed by another, in order to enable him to appear and justify the sale.—*Wharton*.

CENS.—In French Canadian law, an annual tribute or due reserved to a seignior or lord, and imposed merely in recognition of his superiority.—*Guyot Inst.* ch. 9.

CENSARIA.—A farm, or house and land let at a standing rent.—*Cowel*.

CENSARII.—Farmers.—*Blount*. Taxable farmers.—*Cowel*.

CENSIVE.—Tenure by cens (*q. v.*)

CENSITAIRE.—A tenant by cens (*q. v.*)

CENSO.—An annuity; ground rent.—*Burrill*.

CENSUALES.—A species or class of the *oblati* or voluntary slaves of churches or monasteries, *i. e.* those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services.—*Wharton*.

CENSUMETHIDUS, or **CENSUMORTHIDUS**.—A dead rent, like that which is called *mortmain*.—*Blount*; *Cowel*.

CENSURE.—In ecclesiastical law, a spiritual punishment, consisting in withdrawing from a baptized person (whether belonging to the clergy or the laity) a privilege which the church gives him, or in wholly expelling him from the christian communion. (Phillim. Ecc. L. 1367.) The principal varieties of censures are: admonition, degradation, deprivation, excommunication, penance, sequestration, suspension. See those titles.

CENSUS.—(1) A numbering of the people, and an account of their wealth and industries. It takes place, both in England and the United States, once in every ten years. (2) In old law, a tax, tribute, or yearly rent.

CENSUS REGALIS.—The annual revenue or income of the crown.—*Wharton*.

CENT.—**LATIN:** *centum*, one hundred.

The least in value of American coins, being the one-hundredth part of a dollar. It weighs seventy-two grains, and consists of copper and nickel, the former eighty-eight per centum and the latter twelve. (11 U. S. Stat. at L. 163, 164.) This is the cent provided by the act of congress of February 21st, 1857, the one in use previous to that time was composed wholly of copper, and was much larger and heavier than the one in present use.

CENTENA.—In old law: (1) A district containing one hundred freemen. (2) One hundred pounds; a hundred weight.

CENTENARII.—Petty judges, under-sheriffs of counties, that had rule of a hundred (*centena*), and judged smaller matters among them. 1 Vent. 211.

CENTENI.—The principal inhabitants of a district composed of different villages, originally in number a hundred, but afterwards only called by that name.—*Wharton*.

CENTESIMA.—The one hundredth part. Used in the Roman law to denote the rate of interest, *i. e.* one per centum per month, or twelve per centum a year, the highest rate of interest allowed, and called *usuræ centesimæ*. 2 Bl. Com. 462, n. (m).

CENTRAL CRIMINAL COURT.—A court having jurisdiction to try all offences committed within the city of London, the county of Middlesex, and certain suburban parts of Essex, Kent and Surrey. The judges or commissioners are the lord mayor of London, the lord chancellor, the judges of the High Court, the dean of arches, the aldermen of London, the recorder and common sergeant of London, the judge of the City of London Court, and other persons appointed by the crown. Commissioners of oyer and terminer and gaol delivery (*q. v.*) are issued to the court, under which any two or more of the judges hold sessions in the city of London, or its suburbs, at least twelve times a year, to "inquire of, hear, determine and adjudge" all treasons, felonies and misdemeanors committed within the district of the court. (Stat. 4 and 5 Will. IV. c. 36; 4 Steph. Com. 315.) By Stat. 19 and 20 Vict. c. 16, the Queen's Bench Division may order any indictment or inquisition for an offence committed

out of the jurisdiction of the Central Criminal Court to be tried in that court. The court also has jurisdiction in respect of offences committed on the high seas, formerly within the jurisdiction of the High Court of Admiralty. (*Reg. v. Keyn*, 2 Ex. D. 63.) By the Winter Assizes Act, 1876, the jurisdiction of the court may be extended by order in council to any neighboring county, or part of a county, in the months of November, December and January.

CENTRAL OFFICE.—The central office of the Supreme Court of Judicature in England, is the office established in pursuance of the recommendation of the legal departments commission (Second Rep. 23, 47), in order to consolidate the offices of the masters and associates of the common law divisions, the crown office of the Queen's Bench Division, the record and writ clerks' report, and enrollment offices of the Chancery Division, and a few others. (Judicature (Officers) Act, 1879, §§ 4 *et seq.*) The central office is divided into the following departments, and the business and staff of the office are distributed accordingly (Rules of Court, December, 1879; April, 1880): (1) Writ, appearance and judgment; (2) summons and order (for the common law divisions only); (3) filing and record (including the old chancery report office); (4) taxing (for the common law divisions only); (5) enrollment; (6) judgments (for the registry of judgments, executions, &c.); (7) bills of sale; (8) married women's acknowledgments; (9) queen's remembrancer; (10) crown office, and (11) associates. See the titles of the various officials, and title MASTER.

CENTRALIZATION.—**FRENCH:** *centralisation*.

The system of government prevailing in a country where the management of local matters is in the hands of functionaries appointed by the ministers of state, paid by the State, and in constant communication, and under the constant control and inspiration of the ministers of state, and where the funds of the State are largely applied to local purposes.—*Wharton*.

CENTUMVIRI.—A hundred men. The name of a body of Roman judges, consisting properly of one hundred and five men, selected three from each of the thirty-five tribes. Ordinarily, they constituted four tribunals; but the judgment of the entire body was required for the decision of the most important questions of law, which were hence called *causæ centumvirales*.—*Abbott*.

CENTURY.—(1) A period of one hundred years. (2) Among the Romans, one hundred men, the people voting by centuries at elections for magistrates.

CEORL.—See CHURL.

CEPI CORPUS.—I have taken the body. When the sheriff has arrested a person under a writ of *capias* or attachment (*q. v.*) he indorses

on the writ a return to that effect, which is technically called a return of *cepi corpus*. (Archb. Pr. 611; Dan. Ch. Pr. 395). Where the person arrested had not been enlarged on bail, the words, *et est in custodia*, "and he is in custody," were added: and the words, *et paratum habeo*, "and have it ready," were also often added, even where bail had been taken, though originally confined to cases where the defendant was held in actual custody. See RETURN.

CEPI CORPUS, (return by sheriff). 1 Mod. 245.

CEPIT.—He took. The emphatic word formerly used in writs of trespass for taking personal property, and in declarations in replevin and trespass.

CEPIT ET ABDUXIT.—He took and led away. The emphatic words in writs in trespass or indictments for larceny, where the thing taken was a living chattel, *i. e.* an animal.

CEPIT ET ASPORTAVIT.—He took and carried away. The emphatic words in writs in trespass, or indictments for larceny, where the thing taken was an inanimate chattel, *i. e.* goods and merchandise.

CEPIT IN ALIO LOCO.—The name given to that plea in an action of replevin by which the defendant pleaded that he "took" the goods "in another place" than that mentioned in the declaration. It was a plea in bar, not a plea in abatement. *Bullythorpe v. Turner*, Willes 475.

CEPIT NON, (in replevin, distinction between, and "detinet non"). 12 Wend. (N. Y.) 33.

CEPPAGIUM.—The stumps or roots of trees which remain in the ground after the trees are felled. *Fleta*, 1, 2, c. xli.

CERA, or CERE.—In old English law, wax; a seal.

CERAGRUM.—A payment to find candles in the church.—*Blount*.

CEREVISIA.—Ale or beer.

CERT MONEY.—Head-money paid yearly by the residents of several manors to the lords, for the certain keeping of the leet, or inferior courts, and sometimes to the hundred. It is called *certum leto* in ancient records.—*Blount*; *Coed*.

Certa debet esse intentio, et narratio, et certum fundamentum, et certæ quæ deducitur in iudicium: The

design and narration ought to be certain, and the foundation certain, and the matter certain, which is brought into court to be tried. *Co. Litt.* 303a.

CERTAIN, (in an agreement). 2 Bos. & P. 265.

— (in a declaration). 13 East 102; 1 Saund. 202.

— (in a lease). 2 Campb. 573; 2 Chit. Gen. Pr. Appx. 63.

— (when award is). 1 Burr. 275; 2 Brownl. 309; *Stra.* 1024.

CERTAIN DEED, (in a declaration). *Gould Pl.* 190.

CERTAIN NOTES, (in an agreement). 3 Harr. (N. J.) 168.

CERTAIN PERSON UNKNOWN, (in an indictment). 1 Dyer 99.

CERTAIN PORTION OF TITHES, (in a writ of assize). 1 Dyer 84.

CERTAIN RENT, (what is, under statute). 5 Binn. (Pa.) 228.

CERTAIN WRITING, (in a declaration). 1 Saund. 291, n. 1; *Gould Pl.* 190; *Stra.* 814.

CERTAIN WRITING OBLIGATORY, (in a declaration). *Gould Pl.* 190.

CERTAINTY.—

§ 1. In pleading.—Truth; fact. Technically used in two different senses, signifying either distinctness or particularity, as opposed to undue generality.—*Wharton*.

§ 2. In contracts.—Accuracy; distinctness; freedom from ambiguity or vagueness. See INTENT.

CERTAINTY, (in a declaration). *Gould Pl.* 181-187.

— (of description in warrants for lands). 1 Wheat. (U. S.) 482, 483.

CERTIFICANDO DE RECOGNITIO STAPULÆ.—A writ commanding the mayor of the staple to certify to the lord chancellor a statute-staple taken before him, where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in divers other cases.—*Reg. Orig.* 148, 151, 152.

CERTIFICATE.—(1) A writing made in some court to give notice to another court of something done there.—*Termes de la Ley*. (2) A statement in writing by a person having a public or official status, concerning some matter within his knowledge or authority.*

* The principal varieties of certificates relating to legal matters in England, are the following:

(1) Associate.—Where, at the trial of an action at nisi prius, or at the assizes, the judge directs judgment to be entered, the associate gives a certificate to that effect, which is produced to the officer in charge of the judgment book when judgment is entered. *Rules of Court*, xxxvi. 23 *et seq.* xli.; *Archb. Pr.* 382.

(2) Charge.—When the proprietor of land registered under the Land Transfer Act, 1875, creates a charge on it, the proprietor of the charge is entitled to a certificate of charge under the seal of the office; if he transfers the charge, the transferee is entitled to a fresh certificate. It is *prima facie* evidence of its contents. *Land Transfer Act*, 1875, §§ 22, 40, 80.

(3) Chief Clerk.—When a question in an action

CERTIFICATE, (in an agreement, a condition precedent). 9 Bing. 672.

— (in a statute concerning protests). 41 Me. 302.

— (production of). El. Ins. 1262.

— (return of constable is). 38 How. (N. Y.) Pr. 417.

CERTIFICATE IN THE CUSTOMS.

—No goods can be exported by certificate, ex-

cept foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back.—*Wharton. See DRAWBACK.*

CERTIFICATE OF DEPOSIT.—

A certificate given by a bank or private banker, certifying that the person named therein as depositor has deposited a cer-

or suit in the Chancery Division is referred to chambers (as where accounts or inquiries are directed, or a receiver is ordered to be appointed, or a conveyance or other instrument is directed to be settled in chambers), the result of the proceedings is stated in the chief clerk's certificate, which is in the nature of a report to the court of the matters referred to him. (For a specimen of a chief clerk's certificate, see Hunt. S. 294.) In administration actions, certificates may be either general or separate. A general certificate embraces the result of all the proceedings taken at chambers under the judgment or order; a separate certificate comprises the result of only some one or more of them. Separate certificates are made in cases where it is not desirable to wait till the whole proceedings are completed. Thus, in an action for the administration of the estate of a deceased person, where there are debts remaining unpaid, a certificate of their amount is taken at the earliest possible moment, in order that they may be paid. (Dan. Ch. Pr. 1215 *et seq.*) When a party interested thinks the certificate wrong, he may apply to the judge, within a certain time, to vary or discharge it. (*Id.* 1222.) As to certificates in the winding-up of companies, see, also, Lindl. Partn. 1364.

(4) *Costs.*—By the County Courts Act, 1867, if the plaintiff in an action in the High Court recover a sum not exceeding £20 for breach of contract, or £10 for a tort, he is not entitled to costs, unless the judge before whom the action was tried certifies that there was sufficient reason for bringing the action in the Superior Court. (Archb. Pr. 421. It seems that the concluding words of § 67 of the Judicature Act, 1873, have the effect of limiting the operation of the County Courts Act to those actions which may be brought in the county courts. See *Garnett v. Bradley*, 3 App. Cas. at p. 971.) Some statutes give the plaintiff, in certain actions, double or treble costs, if the judge before whom the action was tried certifies that he is entitled to them. Archb. Pr. 430.

(5) *Counsel.*—In common law practice, when a summons at chambers is argued by counsel, it is necessary to obtain the certificate of the judge or master that it was a case requiring the services of counsel; otherwise the successful party will not be allowed the costs of counsel's attendance.

(6) *Discharge.*—In proceedings by liquidation, when the creditors have granted the debtor his discharge, the registrar gives a certificate to that effect, which has the same effect as an order of discharge in the case of a bankrupt.

(7) *Dismissal.*—Where a person is charged before justices of the peace with a common or aggravated assault or battery, and they consider the offence not proved, or find the act to have been justified, or so trifling as not to merit punishment, and they accordingly dismiss the com-

plaint, they are bound to give the defendant a certificate of dismissal, which operates to release him from all other proceedings, civil or criminal, for the same cause. Stat. 24 and 25 Vict. c. 100, §§ 44, 45.

(8) *Incorporation.*—When a company is registered under the Companies Acts, the registrar is bound to give a certificate stating that the company is incorporated, and (if the fact be so) that it is limited. It is conclusive evidence that all the requisitions of the act in respect of registration have been complied with. Comp. Act, 1862, § 18.

(9) *Land.*—A land certificate is a certificate under the seal of the land registry, containing a copy of the registered description of a certain piece of land on the register, the name and address of the registered proprietor, and other particulars. (Land Transfer Act, 1875, §§ 10, 19; General Rules, 33.) It is *prima facie* evidence of the matters contained in it.

(10) *Mortgage.*—Under the Merchant Shipping Act, 1854, the owner of a registered ship may obtain a certificate of mortgage, enabling the person named in it to raise money by mortgage of the ship to a limited amount. The form and object of certificates of mortgage are similar to those of certificates of sale (*infra* 16). § 76 *et seq.*; Maud. & P. Mer. Sh. 39.

(11) *Paymaster-General.*—Upon the completion of every operation by the paymaster-general, except that of paying money out of court, he files a certificate of the fact in the central office (formerly in the chancery report office), and any person interested may obtain an office copy of it.

(12) *Voluntary.*—Another kind of certificate is what is called a "voluntary certificate," which is issued by the paymaster-general to show the state of an account in his books, at the request of a person interested in it; it merely gives the balance or result of the operations on the account up to that time. No order dealing with a fund in court is made without the production of one of these certificates.

(13) *Negative.*—A negative certificate is one certifying that a particular sum of cash or stock has not been paid or transferred into court; such a certificate is required to prove that the order requiring the payment or transfer has not been complied with. Chancery Funds Comm. Rep. App. 38; Dan. Ch. Pr. 1635.

(14) *Referee.*—When a question in an action is referred to an officer of the court (*e. g.* a master) under the Common Law Procedure Act, 1854, § 3, or the Judicature Act, 1873, § 57, on the ground that it is a question of account or the like, the award of the officer is called a certificate.

(15) *Registration, or Registry.*—When an act of parliament requires any document or fact to

tain sum of money in the bank, which is payable to his order, or to a third person named in the certificate as payee.

CERTIFICATE OF DEPOSIT, (negotiability of). 4 Cal. 38.

— (not a promissory note). 6 Watts & S. (Pa.) 227.

CERTIFICATE OF HOLDER OF ATTACHED PROPERTY.—Where property subject to attachment is found by the officer in the possession of some one other than the defendant, such person may, in some jurisdictions, be required to give a certificate, signed by him, describing the property so held and the nature of the defendant's interest therein. See N. Y. Code of Civ. Pro. §§ 650, 651.

CERTIFICATE OF LOSS BY FIRE, (in insurance law). 2 H. Bl. 574, 577; 10 Pet. (U. S.) 513; 2 Car. & P. 550.

— (what to contain). 2 Pet. (U. S.) 25; 16 Wend. (N. Y.) 385, 401; 6 Wheel. Am. C. L. 209.

— (omission in). 7 Cow. (N. Y.) 462.

CERTIFICATE OF PROTEST, (imports, what). 2 Hill (N. Y.) 635.

CERTIFICATE OF REGISTRY.—A certificate of the due registration of a vessel according to law, by means of which her national character is determined. Transfers of the vessel, or of interests in her, must be indorsed on the certificate and also registered, or the ship will lose her national character. The certificate is *prima facie* evidence of owner-

be registered, it generally provides for the delivery, by the registrar, of a certificate stating that the registration has been effected. Such a certificate is usually *prima facie* evidence of the facts stated in it. To this class belong the certificates of charge and incorporation and land certificates mentioned in this article.

(16) *Sale.*—By the Merchant Shipping Act, 1854, the registered owner of a ship may apply to the registrar for a certificate of sale, which contains a description of the ship, a list of registered mortgages, &c., and an appointment by the owner of a person to sell the ship on his behalf, with any limitations as to the price, place and time at which the sale is to be made, which the owner may desire to impose. (§ 76 *et seq.*) The object of obtaining a certificate of sale is to enable the owner to sell his ship out of the country where its port of registry is situate. Maud. & P. Mer. Sh. 28. See *supra* 10.

(17) *Sale and Transfer.*—In chancery practice, when an order directs the sale or transfer of stock in court, it is necessary to obtain a direction by one of the registrars, addressed to the paymaster-general, to the effect that the stock is to

ship, and one of the most important of the ship's papers.

CERTIFICATE OF STOCK.—Upon an application for shares, stocks, or debentures, upon payment of the amount due on allotment, a provisional certificate is in general issued to the applicant-allottee, and this certificate (which is called a "scrip certificate") is afterwards, upon completion of the payments, exchanged for a definitive certificate that the holder is the owner of the therein specified shares, stocks, or debentures. A scrip certificate is a negotiable instrument. (Rumball v. Metropolitan Bank, 2 Q. B. D. 194.) A share certificate is transferred (or the share which it represents is transferred) by the prescribed instrument of transfer, which is not necessarily a deed, but generally a simple assignment written on the back of the certificate.

CERTIFICATE, TRIAL BY.—This is a mode of trial now little in use; it is resorted to in cases where the fact in issue lies out of the cognizance of the court, and the judges, in order to determine the question, are obliged to rely upon the solemn averment or information of persons in such a station as affords them the clearest and most competent knowledge of the truth. (Steph. Pl. 112, 113; Co. Litt. 74).—*Brown.*

CERTIFICATION.—In Scotch judicial procedure, is the assurance given to a party of the course to be followed in case he does not appear or obey the order of the court.—*Be. Dict.*

be sold or transferred, as the case may be. The order and the registrar's direction are then left at the paymaster-general's office to be acted on. The direction is commonly called a "certificate of sale" (or transfer), or simply a "registrar's certificate." Dan. Ch. Pr. 1666; Forms 1898.

(18) *Sheriff.*—When a writ of inquiry has been executed, but the sheriff thinks that the defendant ought to have an opportunity to set the execution aside, he may indorse on the writ a certificate to that effect, which will prevent the plaintiff from signing final judgment until the defendant has had time to move. Stat. 1 Will. IV. c. 7, § 1; Archb. Pr. 815.

(19) *Special Jury.*—Where an action is tried by a special jury, the party at whose instance it is so tried has to bear all the expenses caused by that mode of trial, and is not allowed, upon taxation of costs, any more or other costs than he would have been entitled to if the cause had been tried by a common jury, unless the judge, within a reasonable time after the verdict, certifies that it was a proper cause to be tried by a special jury. Stat. 6 Geo. IV. c. 50, § 34; Arch. Pr. 456.

CERTIFICATION OF ASSIZE.—A writ anciently granted for the re-examining or retrial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial.—*Wharton*.

CERTIFIED, (in a justice's warrant). 1 Stra. 264.

CERTIFIED CHECK.—An accepted check; *i. e.* a check which the drawee certifies to be good. When a properly authorized officer of a bank indorses such a certification on the face of a check presented for that purpose, it is, in law, an admission by the bank that there are funds of the drawer in the bank sufficient to meet the check, and the bank becomes liable as acceptor (*q. v.*)

CERTIFIED COPY.—A copy of a document, signed and certified as a true copy by the officer to whose custody the original is entrusted. By Stat. 14 and 15 Vict. c. 99, § 14, it is enacted, that whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice, &c., provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted. Best Ev. 620. See COPY.

CERTIFIED COPY, (in transcript of justice's docket). South. (N. J.) 143.

CERTIFY, THIS IS TO, (in a deed). Coxe (N. J.) 198.

CERTIORARI.—

§ 1. In American practice.—(1) A writ used as a mode of appeal from courts not of record, such as justices' courts. (2) It is also used to review proceedings of inferior courts of record, commissioners, magistrates and officers exercising judicial powers, where their action or procedure is under authority conferred by statute, or is not according to the course of the common law. The proceeding may be removed at any stage, either before or after judgment or other final determination. See the statutes of the several States as to this use of the writ. (3) Where either party to an appeal or writ of error alleges a diminution or insufficiency of the record, the writ issues as auxiliary process, its object being to bring up a complete return

or record: in this use it resembles a *mandamus*, which Bouvier thinks may be used to effect the same object. (4) In some States *certiorari* lies to remove criminal causes to a higher court. (5) It also issues in some cases, in aid of the writ of *habeas corpus*, where the imprisonment complained of is imposed in legal proceedings and such proceedings must necessarily be brought before the court for review, in order that the merits of the petitioner's case may be presented. The writ does not lie to review questions of fact or discretionary action in the tribunal below; it is also a discretionary writ, not a writ of right.

§ 2. In English practice, *certiorari*, in ordinary cases, is a writ directed to an inferior court of record, commanding it to certify to the queen in the High Court of Justice some matter of a judicial character. Its principal use is to remove civil causes from inferior courts of record into the High Court (*e. g.* from a county court or the Mayor's Court), (Archb. Pr. 1404 *et seq.*; Dan. Ch. Pr. 1430; Poll. C. C. Pr. 230; Cand. M. C. Pr. 104; Judicature Act, 1873, § 90; Reg. v. Sheward, 5 Q. B. D. 179), where it is desirable that they should be tried in the superior court, or to remove an indictment from an inferior criminal court (*e. g.* Quarter Sessions) into the Central Criminal Court or the Queen's Bench Division, or from the Central Criminal Court into the Queen's Bench Division, in order the better to consider and determine the validity of the indictment and the proceedings thereon, and to prevent a partial (*i. e.* biased) and insufficient trial. (Archb. Cr. Pl. 98; Pritch. Quar. Sess. 357; Stat. 19 and 20 Vict. c. 16.) The inferior court obeys the writ by transmitting the record of the proceedings (or, in some cases, a transcript of it) to the superior court.

§ 3. To produce record.—A *certiorari* is also sometimes used where the record of a proceeding in an inferior court is required to be produced in the high court on an issue of *nul tiel* record (*q. v.*) Archb. Pr. 753.

§ 4. Trial of peer.—Where a peer or peeress is indicted of treason or felony, the indictment is removed into the House of Lords, or (if it is not sitting) into the Court of the Lord High Steward, by writ of *certiorari*. Hom. Cox Inst. 472.

CERTIORARI, (defined). 25 Wend. (N. Y.) 64, 157.

— (when a *supersedas*). 13 Wend. (N. Y.) 664.

— (when costs not allowed on). 14 Wend. (N. Y.) 237.

— (when it lies to remove a record). 1 Arch. Pr. 208.

— (without bond, ineffectual). 11 Wend. (N. Y.) 174.

— (what to be returned). 15 Wend. (N. Y.) 451, 490.

— (in criminal cases). Tidd. Pr. 912

Certum est quod certum reddi potest: That is certain which can be rendered certain. 9 Co. 47. See illustrations of this maxim in Broom Max. (5 edit.) 623.

CERURA.—A mound, fence, or inclosure.—Wharton

CERVISARII.—Tenants who paid a duty called by the Saxons *drinclean*, i. e. *retributio potus*.—Domesday.

CERVISIA.—Ale, or beer. Sometimes spelled *cerevisia*.

CESIONARIO.—In Spanish law, an assignee.

CESS.—(1) To cease; (2) an assessment, or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.—Wharton.

Cessa regnare, si non vis judicare: Cease to reign, if you wish not to adjudicate. Hob. 155.

Cessante causa, cessat effectus: The cause ceasing, the effect ceases. Wing. Max. 29.

Cessante ratione legis, cessat ipsa lex: The reason of the law ceasing, the law itself ceases. (Co. Litt. 70.) This maxim may be thus illustrated: Where a contract, not under seal, is made with an agent in his own name, for an undisclosed principal, and on which, therefore, either the agent or principal may sue, the defendant, as against the latter, is entitled to be placed in the same situation at the time of the disclosure of the real principal, as if the agent dealing in his own name had been in reality the principal, and this rule is to prevent the hardship under which a purchaser would labor, if, after having been induced by peculiar considerations—such, for instance, as the consciousness of possessing a set-off—to deal with one man, he could be turned over and made liable to another, to whom those considerations would not apply, and with whom he would not willingly have contracted. Broom Max. (5 edit.) 159. See 13 Vr. (N. J.) 446.

Cessante statu primitivo, cessat derivativus: The original state ceasing, the derivative ceases. 8 Rep. 34.

CESSAVIT PER BIENNIIUM.—An action which lay where a man who held lands by rent or other services, neglected or ceased to perform his services for two years together. The action enabled the plaintiff to recover the land itself, unless the tenant tendered the arrears of rent (if any) and damages before judgment, and gave security for the future performance of the services. The action was abolished by Stat. 3 and 4 Will. IV. c. 27, § 36. 3 Bl. Com. 232; Termes de la Ley; Hargrave's note to Co. Litt. 142a.

CESSE.—(1) An assessment or tax; (2) a tenant of land was said to *cesse* when he neglected or ceased to perform the services due to the lord. Co. Litt. 373a, 380b.

CESSER.—The cesser of a term, annuity, or the like, takes place when it determines or comes to an end. The expression is chiefly used in England, with reference to long terms of a thousand years or some similar period, created by a settlement for the purpose of securing the income, portions, &c., given to the objects of the settlement. (As to these, see SETTLEMENT.) When the trusts of a term of this kind are satisfied (as where it was created to secure an annuity, and the annuitant has died), it is desirable that the term should be put an end to, and with this object it was formerly usual to provide in the settlement itself that as soon as the trusts of the term had been satisfied, it should cease and determine; this was called a "proviso for cesser." Now, however, by the operation of the Stat. 8 and 9 Vict. c. 112, every term of years ceases and determines *ipso facto* as soon as its trusts are satisfied. Wms. Sett. 253 *et seq.* See TERM.

CESSET EXECUTIO.—Let execution stay. Where defendants plead severally, if they be found guilty of the same act of trespass, the damages cannot be severed, but the jury who try the first issue shall assess damages against all; and there shall be a *cesset executio* until the other issues are tried, when the other defendants, if found guilty, shall be contributory to those damages. 11 Co. 6a, 7a. See EXECUTION.

CESSET PROCESSUS.—Let process stay. A stay of proceedings entered on the record.

CESSIO.—A cession; a surrender; an assignment.

CESSIO BONORUM.—In the Roman law, a surrender by a debtor of his property to his creditors in lieu of execution against his body. It did not release the debtor from his debts if he afterwards acquired property from which he could pay them without leaving himself in want. (Hunt. Rom. L. 879; Holtz. Encycl. s. v.) The principle of *cessio bonorum* has been adopted in many continental countries as a mode of giving relief to insolvent debtors (Holtz. *ubi supra*; Banco de Portugal v. Waddell, 5 App. Cas. 161), and was formerly a mode of effecting arrangements with creditors in English law. (See ARRANGEMENTS WITH CREDITORS.) A *cessio bonorum* is now an act of bankruptcy (*q. v.*) Tompkins v. Saffery, 3 App. Cas. 213.

CESSIO IN JURE.—A fictitious suit, in which the person who was to acquire the thing claimed (*vindicabat*) the thing as his own, the person who was to transfer it acknowledged the justice of the claim and the magistrate pronounced it to be the property (*addicebat*) of the claimant. Sand. Inst. (5 edit.) 89, 122.

CESSION.—(1) In jurisprudence, cession signifies transfer or alienation, but it is not a term of English law in this sense. (2) In ecclesiastical law, cession is where a person loses a benefice by accepting a new benefice or preferment, contrary to the acts against pluralities (*q. v.*)

(Stat. 1 and 2 Vict. c. 106; 13 and 14 Vict. c. 98; 2 Steph. Com. 691). (3) In governmental law, cession is the transfer of territory from one government to another.

CESSION DES BIENS.—In French law, the surrender which a debtor makes of all his goods to his creditors, when he finds himself in insolvent circumstances. It is of two kinds, either voluntary or compulsory (*judiciaire*), corresponding very nearly to liquidation by arrangement and bankruptcy in English and American law.

CESSIONARY BANKRUPT.—One who gives up his estate to be divided amongst his creditors.—*Wharton*.

CESSMENT.—An assessment, or tax.

CESSOR.—One who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law.—*O. N. B.* 136.

CESSURE, or CESSOR.—Ceasing, giving over, departing from. See **CESSER**.

CESTUI QUE TRUST.—A beneficiary, or person for whom another is trustee. See **BENEFICIARY**; **TRUST**.

CESTUI QUE USE.—In the old law of real property, a person to whose use (*i. e.* for whose benefit) lands or other hereditaments were held by another person. The modern equivalent is the *cestui que trust*. (See **USE**.) "Cestui que use" is a corruption of *cestui à que use*, "he to whose use." See **CESTUI QUE VIE**.

CESTUI QUE VIE.—Where a person is entitled to an estate or interest in property during the life of another, the latter is called the *cestui que vie*. As to the production of a *cestui que vie* in cases where it is suspected that he is dead, see **PRODUCTION**. "Cestui que vie" is a corruption of *cestui à que vie*, "he for whose life." Compare the phrase "que estate" in the title **PRESCRIPTION**.

CHACEA.—A station of game, more extended than a park, and less than a forest; also, the liberty of chasing or hunting within a certain district; also, the way through which cattle are driven to pasture, otherwise called a drove-way.—*Blount*; *Bract.* 1, 4, c. xlv. See **CHASE**.

CHACER.—(1) To drive, compel, or oblige; (2) to chase or hunt.—*Burrill*.

CHACURUS.—A horse for the chase, or a hound, dog, or courser.—*Wharton*.

CHAFFERS.—An ancient term for goods, wares and merchandise.

CHAFFERY.—Traffic; the practice of buying and selling.

CHAFFWAX, or CHAFEWAX.—An officer in chancery, who fitted the wax to

seal writs, commissions and other instruments. The office was abolished by 15 and 16 Vict. c. 87, § 23.

CHAIN.—An engineer's measure of 22 yards length.

CHAIRMAN.—(1) The presiding officer of a deliberative body, legislative or otherwise; *e. g.* the speaker of a house of assembly, or of the house of representatives, or the presiding member of a board of directors of a corporation or association. (2) The president or senior member of a committee.

CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE.—In the English House of Commons, this officer, always a member, is elected by the house on the assembling of every new parliament. When the house is in committee on bills introduced by the government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside; he sits, not in the speaker's chair, but at the table in the seat of the clerk of the house. On divisions, when the numbers happen to be equal, he gives the casting vote (*q. v.*), but in committees he never otherwise votes. In August, 1853, it was, by a resolution of the house, decided that during the unavoidable absence of the speaker, this officer should preside in his stead, being only so appointed, however, from day to day. (See 18 and 19 Vict. c. 84.) In the House of Lords the chairman of committees of the whole house is elected by the house every session; he usually holds in addition the office of deputy speaker of the House of Lords. *Dod. Parl. Comp.*

CHALDRON, CHALDERN, or CHALDER.—Twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon twelve barrels or pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton.—*Wharton*. Bouvier says the chaldron equals in capacity "fifty-eight and two-thirds cubic feet nearly."

CHALLENGE.—An objection to persons returned to be jurors in a civil or criminal proceeding. It is of two kinds—to the array, or to the polls.

§ 1. **To the array.**—A challenge to the array is an exception to the whole jury ("And herein you shall understand that the jurors' names are ranked in the pannel one under another, which order or ranking the jurie is called the array." *Co. Litt.* 156 a) in respect of some partiality or default of the sheriff or other officer. Some causes of challenge to the array are called "principal challenges," because if

they are true they must be allowed, while others are called "challenges for favor," because they show some grounds that imply a probability of favor or partiality, but are left to the discretion of the triors (*q. v.*) Challenges to the array are rare in most of the States, the proper relief being obtainable on motion.

§ 2. **To the polls.**—**Peremptory.** Challenges to the polls (*i. e.* to particular jurors) are of five kinds. A peremptory challenge is where the objecting party may challenge without showing any cause; this is only allowed, in England, in trials for treason or felony, *in favorem vitæ*, and is restricted to thirty-five jurors in the former, and twenty in the latter. (6 Geo. IV. c. 50; 7 and 8 Geo. IV. c. 28; Archb. Cr. Pl. 157.) In some few of the States, peremptory challenges, to a number specified by statute, are allowed in both civil and criminal cases, but in the greater number the right is confined to criminal cases, and in some to capital cases.

§ 3. **For cause.**—The following kinds of challenge are called, by way of distinction, "challenges for cause": *Propter honoris respectum*, as where a lord of parliament is impaneled on a jury (this sort of challenge is unknown in the United States); *propter defectum*, for some want or defect in the individual juror, *e. g.* persons not having qualification, idiots, aliens neither domiciled nor naturalized (*see* Juries Act, 1870, § 8; for other defects now obsolete, *see* Co. Litt. 156b), women, &c.; *propter affectum*, for suspicion of partiality, which is either (1) a principal challenge, as where the juror is of kin to either party, or has an interest in the cause, &c.; or (2) a challenge to the favor, where there is merely a probability of bias (Co. Litt. 157a,b; 4 Steph. Com. 525); *propter delictum*, for some crime or misdemeanor. *Id.*

§ 4. **Triors.**—Challenges are tried and determined by triors appointed by the court, or, in some cases, by the court itself, or by persons who have been already sworn on the jury. 4 Steph. Com. 522, 526; Chitty Pr. 433; Co. Litt. 158a. *See* ELISORS.

CHALLENGE, (to the favor). 2 Green (N. J.) 195.

CHALLENGE TO FIGHT.—It is an offence, punishable with fine and imprisonment, to challenge any person to fight a duel, or to endeavor to provoke him to send a challenge. Steph. Crim. Dig. 40; 6 Blackf. (Ind.) 20; 3 Wheel. Cr. Cas. 245.

CHALLENGE TO FIGHT, (in an indictment). 1 Tyl. (Vt.) 181.
—— (in statute of crimes). South. (N. J.) 40.

CHAMBER.—A room in a house, and hence the place where certain assemblies are held; also the assemblies themselves. *See* CAMERA.

CHAMBER OF ACCOUNTS.—A court of great antiquity, in France, having cognizance of accounts of the royal revenue; nearly the same as the English Court of Exchequer. (Encyc. Brit.)—*Bouvier*.

CHAMBER OF COMMERCE.—An assembly of merchants and traders, where affairs relating to trade are treated of. There are establishments of this sort in most of the chief cities in France, England and in this country, though often called by a different name, such as "board of trade" (*q. v.*)

CHAMBER, WIDOW'S.—Certain effects of a deceased person—such as the widow's apparel, the furniture of her bed-chamber, &c.—are set apart for her, and called in London the "widow's chamber." 2 Bl. Com. 518.

CHAMBERDEKINS, or CHAMBER DEACONS.—Certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England. (1 Hen. V. cc. 7 and 8).—*Wharton*.

CHAMBERLAIN.—A person who has the management or direction of a chamber or chambers. It is variously used in English statutes and chronicles. Among the most important are (1) the lord chamberlain of Great Britain, the sixth high officer of the crown, to whom belongs the government of the palace at Westminster, and upon all solemn occasions the keys of Westminster Hall and the Court of Requests are delivered to him; he disposes of the sword of state to be carried before the queen when she comes to parliament, and goes on the right-hand side, next to the queen's person; he has the care of providing all things in the House of Lords during its sessions; to him belong livery and lodgings in the queen's courts, &c., and the gentleman usher of the black rod, yeoman usher, &c., are under his authority. As to his power of licensing theatres, *see* 6 and 7 Vict. c. 68. The office is hereditary. (2) The lord chamberlain of the household; he has the

oversight and direction of all officers belonging to the queen's chambers, except the precinct of the bed-chamber. (3) The chamberlain of London; who keeps the city money, presides over the affairs of the citizens and their apprentices, and presents the freedom of the city to those who have faithfully served their apprenticeships.—*Wharton*. In several of the large cities of the United States, the officer having charge of public funds, money paid into custody of the law, &c., is called the "chamberlain" of the city.

CHAMBERLAIN, (means treasurer). 2 Kyd. Corp. 158.

CHAMBERS.—(1) Attached to the various courts of record are rooms called chambers, in which the judges sit to transact business which does not require to be done in court, or can be more conveniently disposed of in chambers. In England the proceedings in chambers are private, only the parties or their solicitors and counsel being admitted, but no such rule prevails in this country. The principal business is hearing *ex parte* applications, conducting references and examining witnesses about to proceed abroad, &c. (2) The offices of a barrister. See CAMERA REGIS.

CHAMBERS, (in a will). 3 Watts (Pa.) 240, 242; 3 Barn. & Ad. 469; 1 Chit. Gen. Pr. 250.

—— (of a judge). 122 Mass. 449.

—— (jurisdiction of judge at). 17 Ohio St. 144.

CHAMP DE MAI.—See CAMPUS MAI.

CHAMP DE MARS.—See CAMPUS.

CHAMPART.—Field rent; champerty.

CHAMPARTY, or CHAMPERTY.—NORMAN-FRENCH: *champart* (Britt. 87b); LATIN: *campi pars*, "part of the field," originally the right of a feudal lord to take part of the produce of land cultivated by his tenants. *Littre s. v.*

The act of assisting the plaintiff or defendant in a legal proceeding in which the person giving the assistance has no valuable interest, on an agreement that if the proceeding is successful, the proceeds shall be divided between the plaintiff or defendant, as the case may be, and the assisting person. It is a misdemeanor indictable at common law, but the common law doctrine of champerty has been so much relaxed by statute in the several States, that many agreements which formerly were champertous are no longer so, *e. g.* agreements to purchase land, the title to which

is in litigation, agreements with attorneys for contingent fees, &c. 4 Steph. Com. 237; Poll. Cont. 270; Steph. Cr. Dig. 86; see *Ram Coomar Coondoo v. Chunder Canto Mookerjee*, 2 App. Cas. 186. See MAINTENANCE.

CHAMPERTORS.—Persons who move pleas or suits, or cause them to be moved, either by their own procurement, or by others, and sue them at their proper costs, in order to have part of the land in variance, or part of the gain. 33 Edw. I. c. 2.

CHAMPERTY, (defined). 7 Port. (Ala.) 488; 29 Ala. 676; 13 Ind. 117; 5 T. B. Monr. (Ky.) 414; 4 Litt. (Ky.) 413; 51 Me. 62; 1 Pick. (Mass.) 416; 2 Mo. App. 1; 4 Duer (N. Y.) 275; 1 Ohio 132; 7 Bing. 369, 374.

—— (what is). 57 Ga. 263.

—— (what does not amount to). 9 B. Monr. (Ky.) 240, 247; 12 *Id.* 348; 4 Bibb (Ky.) 545; 12 Johns. (N. Y.) 484; 3 Cow. (N. Y.) 623; 5 Den. (N. Y.) 308; 9 Humph. (Tenn.) 447; 33 Vt. 405.

—— (agreement for contingent fee not). 10 Ala. 213; 10 B. Monr. (Ky.) 336; 6 Dana (Ky.) 479.

CHAMPION.—A person who fights a combat in his own cause, or in place of another. (Bract. 1, 3, tr. 2, c. 21; 3 Bl. Com. 339.) Chiefly applied to one who fought in place of the tenant, or the demandant in the trial by battel (*q. v.*)

CHAMPION OF THE KING OR QUEEN.—An ancient officer, whose duty it was to ride, armed *cap-à-piè*, into Westminster Hall, at the coronation, while the king was at dinner, and, by the proclamation of a herald, make a challenge, "that if any man shall deny the king's title to the crown, he is there ready to defend it in single combat." The king drank to him, and sent him a gilt cup covered, full of wine, which the champion drank, retaining the cup for his fee. This ceremony has been discontinued.—*Wharton*.

CHANCE.—Misfortune, accident (*q. v.*), deficiency of will. Where a man commits an unlawful act by misfortune and chance, and not by design, his will not co-operating with the deed, such act wants one main ingredient of a crime. If an accidental mischief should follow from the performance of a lawful act, the party stands excused from all guilt; but if the act be felonious, and a consequence ensues not foreseen or intended, as the death of a man, or the like, his want of foresight shall be no excuse, for, being guilty of one offence, in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequence may follow. But a very important distinction is made in such cases, viz., whether the unlawful act is also in its original nature wrong and mischievous, for a person is not answerable for the incidental consequences of an unlawful act, which is merely *malum prohibitum*; as, where any unfortunate

accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified. (Fost. 259; 1 Hale P. C. 475.)—*Wharton*.

CHANCE, (what is, in choosing arbitrators). 2 Vern. 485.

CHANCE-MEDLEY.—Where a man is assaulted in the course of a sudden brawl or quarrel, and, after he has declined any further combat, kills his adversary in self-defence. It is a variety of excusable homicide. (1 Russ. Cr. 845. See HOMICIDE.) Coke paraphrases chance-medley as "homicide *per infortunium*" (Co. Litt. 287 b), but it is said that the term is a corruption of *chaude meslée*, a "hot fight." See 4 Bl. Com. 184; Loysel Inst. Cout. gl.; Littré s. v. *Mêlée*.

CHANCEL.—That part of a church which was originally set apart for the clergy to perform their religious offices; it answers to the choir in a cathedral or collegiate church. The rector or lay impropriator is bound to repair the chancel, and in return he is entitled as of common right to the chief seat in it, unless some other parishioner has it by prescription. (Phillim. Ecc. L. 1785, 1807.) Chancel is derived from *cancelli*, a lattice-work partition between it and the body of the church. *Id.* 1776.

CHANCELLOR.—LATIN: *cancellarius*, a clerk, said to be so called from his sitting *ad cancellos*, at the railing which separated the judges from the public. See Dirksen Man. Lat. s. v.; Littré Dict. s. v. Chancellor. Compare BAR.

§ 1. In American law, the chief or presiding judge in a court of chancery. The judges of State courts exercising equity jurisdiction exclusively, are frequently called chancellors.

§ 2. In English law, a judicial officer of a king, a bishop or other high dignitary. The different kinds of chancellors are enumerated below.

§ 3. The lord high chancellor of Great Britain is "created by the mere delivery of the king's great seal into his custody, whereby he becomes, without writ or patent, an officer of the greatest weight and power of any now subsisting in the kingdom, and superior in point of precedence to every temporal lord. He is a privy councillor by his office, and, according to Lord Chancellor Ellesmere, prolocutor (or speaker) of the House of Lords by prescription. To him (under the crown) belongs the appointment of all justices of the peace throughout the kingdom. Being formerly usually an ecclesiastic (for none else were then capable of an office so conversant in writings), and presiding over the royal chapel, he became keeper of the king's conscience, visitor (in right of the king) of all hospitals and colleges of the king's foundation, and patron of all the king's livings under the value of twenty marks per annum in the king's books. (Twelve canonries and 650 livings are now in the gift of the lord chancellor. Second Rep. of Legal Deputy Comm. 34.) He is the

general guardian of all infants, idiots and lunatics, and has the general superintendence of all charitable uses in the kingdom." (3 Bl. Com. 47. See Butler's note to Co. Litt. 290 b.) He was formerly the principal judge of the Court of Chancery, and is now president of the Court of Appeal, of the High Court of Justice, and of the Chancery Division of the High Court, and acts as president of the House of Lords when sitting as a court of appeal. He is, therefore of course a barrister, and, as a rule, has previously either been attorney or solicitor-general or held some judicial office. He is also a cabinet minister, and has charge, in the House of Lords, of all legal measures brought forward by the government. See CHANCERY; PRESENTATIONS OFFICE; VICE-CHANCELLOR.

§ 4. Chancellor of duchy of Lancaster.—The chancellor of the duchy and county palatine of Lancaster is an official of the crown as owner of the duchy of Lancaster. His duties appear now to be chiefly ministerial, although he is nominally the judge of the Chancery Court of the County Palatine, and of the Duchy Chamber Court. (See those titles.) The judicial duties of the former court are performed by the vice-chancellor, and the latter court seems rarely to sit. 3 Bl. Com. 78.

§ 5. Chancellor of diocese.—The chancellor of a bishop or diocese is a judicial officer who acts as the delegate of the bishop in hearing ecclesiastical causes, &c. The office generally includes in it two other offices—that of official principal, and that of vicar-general (*q. v.* and see COURT OF ARCHES). Phillim. Ecc. L. 1208.

§ 6. The chancellor of the exchequer was an officer originally appointed to act as a check on the lord treasurer, and was a judge of the Court of Exchequer, sitting as a court of equity. The office, however, has long ceased to belong to the exchequer in the modern sense of the word, and has formed part of the treasury. (Hom. Cox Inst. 683; 3 Bl. Com. 44.) The judicial functions of the chancellor of the exchequer were formally abolished by the Judicature Act, having long been practically obsolete.

§ 7. Chancellor of a cathedral.—One of the *quatuor personæ*, or four chief dignitaries of the cathedrals of the old foundation. The duties assigned to the office by the statutes of the different chapters vary, but they are chiefly of an educational character, with a special reference to the cultivation of theology.

§ 8. Chancellor of the order of the garter.—An officer who seals the commissions and the mandates of the chapter and assembly of the knights, keeps the register of their proceedings, and delivers their acts under the seal of their order.

§ 9. In the Scotch law, the foreman of an assize or jury.—*Burrill*.

CHANCELLOR'S COURTS IN THE TWO UNIVERSITIES.—See COURTS OF THE UNIVERSITIES.

CHANCERY.—NORMAN-FRENCH: *chauncerie* (Britt 37 b, 122 b); LOW LATIN: *cancellaria* ("Officium quod dicitur cancellaria," Fleta 75), from *cancellarius*, a chancellor.

§ 1. In American law, equity; a court of equity; the court of the chancellor. In the United States, the terms "equity" and "court of equity" are more commonly used than "chancery" and "court of chancery," there being in most of the States no distinct court of chancery, equity jurisdiction being exercised in courts having both legal and equitable powers. In some States, however, distinct and separate courts of chancery are established, over which a chancellor presides; these are properly called "courts of chancery." In those of the states which have adopted codes of practice, all distinctions between actions at law and suits in equity are abolished, and the courts apply the rules of either system most adapted to the circumstances of the particular case.

§ 2. High Court of Chancery.—In England, before the Judicature Acts came into operation, the chancery consisted of two courts, and a number of offices. The Court of Equity, or the equity side of the Court of Chancery, which is generally meant by the expression "Court of Chancery," was the principal court in which that part of the law of England known as equity was enforced. It consisted of four judges of first instance, namely, the master of the rolls (*q. v.*), and three vice-chancellors (*q. v.*), and a court of appeal, consisting of the lord chancellor and two lords justices (*q. v.*) Not only did the law administered in the Court of Chancery differ from that recognized in the courts of common law, but it had also a different procedure. See SUIT; BILL OF COMPLAINT; PETITION; MATTER.

§ 3. Chancery Division.—By the Judicature Acts the Court of Chancery has been merged in the Supreme Court of Judicature, and its practice altered; but its judges of first instance form a separate division of the high court, namely, the chancery division, which retains most of the business which was formerly within the exclusive jurisdiction of the Court of Chancery; and in many of its details the practice in chancery proceedings remains the same as before. The chancery division also retains many of the various offices and officers attached to the Court of Chancery, while others have been abolished. See CHIEF CLERK; EQUITY; INQUIRY; MASTER; RECORD AND WRIT CLERK; REGISTRAR.

§ 4. Common law side and offices of the Chancery.—The common law court and offices of the chancery are much more ancient than the equity court (3 Bl. Com. 48), the jurisdiction of the latter having been originally an encroachment, and hence in old books the equitable jurisdiction of the court is called its "extraordinary jurisdiction." The most important part of the common law side of the Court of Chancery was its offices, especially the petty bag office, the hanaper office and the enrolment office, the two former of which were concerned in issuing

or sealing original writs, writs of error, parliamentary writs, letters-patent, commissions to inquire as to lunatics, charities, &c., while in the enrolment office, as its name implies, deeds, &c., were enrolled or entered on record. The court on this side of the chancery had jurisdiction in matters relating to the business of the offices—*e. g.* in proceedings by *scire facias* to repeal letters-patent, to enforce recognizances, in traverses of offices, and inquisitions, &c. Gilb. Ch. 9; Chit. Pr. 1757; 2 Dan. Ch. Pr. 1608; 2 Wms. Saund. 15. See ENROLMENT; HANAPER; PETTY BAG OFFICE; SCIRE FACIAS.

§ 5. By the Judicature Act, 1873, the Court of Chancery, as a common law court, and its offices, were transferred to the Supreme Court of Judicature. (Jud. Act, 1873, §§ 16, 77.) By the Judicature (Officers) Act, 1879, the enrolment office was consolidated (with others) into the central office of the Supreme Court, and the petty bag office is to be abolished on the next vacancy.

§ 6. Lancaster Chancery Court.—The Court of Chancery of the County Palatine of Lancaster is a court having a local jurisdiction in equity. It consists of a vice-chancellor, with a registrar and other officers, forming a court of first instance, from which an appeal formerly lay to the "Court of Appeal in Chancery of the County Palatine of Lancaster," consisting of the chancellor of the duchy and the lords justices of the Court of Appeal in Chancery, (Stat. 13 and 14 Vict. c. 43; 17 and 18 Vict. c. 82. As to the jurisdiction of the court, see *In re Alison's Trusts*, 8 Ch. D. 1; *In re Longden, &c., Co., Id.* 150;) but by the Judicature Acts, 1873, 1875, this appellate jurisdiction has been transferred to the Court of Appeal of the Supreme Court. (Jud. Act, 1873, § 18.) New rules for the procedure of the court were issued at the end of 1876. Since the above article was written, a treatise on the practice of the court, by Messrs. Snow and Winstanley, has appeared.

§ 7. Chancery Court of York.—The Chancery Court of York is the ecclesiastical court of appeal for cases decided in the diocesan courts within the province of York. (Phillim. Ecc. L. 1207.) The judge is called the "official principal of the court"; he is also official principal of the Court of Arches (*q. v.*) Public Worship Regulation Act, 1874.

§ 8. The chancery was originally an office for the issue of writs, including the original writs by which all common law actions were commenced in ancient times. It was the business of the clerks in the chancery to "hear and examine the petitions and complaints of suitors, and give them a remedy by the king's writ fitted to their case." (2 Reeves Hist. Eng. L. 251.) The chancellor, being keeper of the king's seal, also had the sealing of all charters, letters-patent, and other public instruments, (see 1 *Id.* 60; 2 *Id.* 250;) hence, when any question arose on a charter, patent, commission, &c., proceedings were taken before the chancellor (Gilb. Ch. 12); this was the origin of its common law jurisdiction.

'CHANGE.—An abbreviation of "exchange," (*q. v.*) See 4 Abb. (N. Y.) Pr. N. S. 162, 190.

CHANGE AND ALTER, (a charter). 3 C. E. Gr. (N. J.) 178.

CHANGE IN USE, (of a building insured). 59 Me. 582.

CHANGE OF GRADE, (in city charter). 31 Iowa 31.

CHANGE OF POSSESSION, (in fire insurance policy). 46 N. Y. 526; 7 Am. Rep. 380.

CHANGE OF TITLE, (in fire policy). 54 Ill. 164, 168; 23 Ind. 179; 17 Iowa 176; 21 Id. 193; 13 Gray (Mass.) 431; 24 Minn. 315; 18 Mo. 128; 5 N. Y. 405.

CHANGING HIS OCCUPATION, (in a life insurance policy). 5 Vr. (N. J.) 371.

CHANGING INFANT'S ESTATE FROM REALTY TO PERSONALTY, (reasons for). 15 Wend. (N. Y.) 443.

CHANGER, or CHAUNGER.—An officer formerly belonging to the mint in England, who exchanged coin for bullion brought in by merchants or others.

CHANNEL, (of stream). 42 Mich. 638.

CHANTER.—The chief singer in the choir of a cathedral. Mentioned in 13 Eliz. c. 10.

CHANTRY, or CHAUNTRY.—A little church, chapel, or particular altar, in some cathedral church, &c., endowed with lands, or other revenues, for the maintenance of one or more priests, daily to sing mass, and perform divine service for the souls of the donors and such others as they appointed. See 1 Edw. VI. c. 14, abolishing them.—*Wharton*.

CHAPEL.—

§ 1. A place of worship; a lesser or inferior church, sometimes a part of or subordinate to another church.—*Webster*.

§ 2. In English ecclesiastical law, chapels are of the following kinds: (1) A chapel of ease is one which is used only for the ease of the parishioners in prayers and preaching, while the sacraments and burial are received and performed at the mother church; the curate of such a chapel is generally removable at the pleasure of the parochial minister. (2) A parochial chapel is one which has the privilege of administering the sacraments (especially baptism), and the office of burial. (3) A free chapel is one which is exempt from the jurisdiction of the bishop of the diocese, having been erected either by the crown, or by the crown's license, with that exemption. (4) Private chapels are such as noblemen and other persons have, at their own private charge, built in and near their own houses, for them and their families to perform religious duties in. The minister is called a "chaplain," and is nominated by the owner of the chapel. (Phillim. Ecc. L. 1821.) (5) There are also chapels built or endowed under acts of parliament, especially under the church building and church extension acts; the principal of these are (a) district chapelries or chapels to which districts have been assigned by the ecclesiastical commissioners; such chapels have perpetual curates, with tithes, and exclusive cure of souls, and differ

from churches in little more than name (*Id.* 2171); (b) consolidated chapelries, which differ from district chapelries chiefly in being formed out of portions of many parishes (*Id.* 2172); (c) chapels to which an endowment, without a district, has been granted by the commissioners. *Id.* 2168.

CHAPELRY.—The precincts and limits of a chapel; the same thing to a chapel as a parish is to a church.—*Termes de la Ley*.

CHAPERON.—A hood or bonnet anciently worn by the knights of the garter, as part of the habit of that noble order; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral.—*Wharton*.

CHAPITRE.—A summary of such matters as are to be inquired of or presented before justices in eyre, justices of assize, or the peace, in their sessions. Also, articles delivered by the justice in his charge to the inquest. Britt. c. iii.

CHAPLAIN.—(1) An ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince or other person of quality, for the performance of clerical duties in a private chapel. (4 Co. 90).—*Wharton*. (2) A clergyman officially attached to a ship-of-war, to an army (or regiment), or to some public institution, for the purpose of performing divine service.—*Webster*.

CHAPMAN.—A cheapener, one that offers as a purchaser; also a seller; a trader from place to place.

CHAPTER.—See DEAN AND CHAPTER.

CHARACTER.—The sum of qualities which distinguish one person from another; good qualities, or the reputation of possessing them.—*Webster*. The legal use of the word "character" is principally confined to the latter branch of the above definition, so that in the law of evidence the word has come to mean little more than "reputation," while in their popular meanings the two words differ widely.

§ 1. Of party.—Evidence as to the character of a party to a judicial proceeding is not, in general, admissible, unless the nature of the proceeding is such as to put his character in issue. Such evidence is, therefore, admissible on an indictment for keeping a common gaming-house, or for being a common barrettor, if it bears on the charge; and so, in an action for seduction or criminal conversation, or in a

prosecution for rape, evidence may be given as to the character of the woman for chastity. (Best Ev. 358.) A prisoner may call witnesses to speak to his character in reference to the charge against him, and the prosecutor may then adduce evidence of his general bad character, but he cannot go into particular instances of misconduct. But if the prisoner calls witnesses as to character, the prosecutor may, in answer thereto, give evidence of his conviction for a previous felony.

§ 2. **Of witness.**—Evidence is also admissible to show that a witness is unworthy of credit by reason of his general bad character; and if he is asked whether he has been convicted of felony or misdemeanor, and denies or refuses to answer, the opposite party may prove the conviction.

CHARACTER, (defined). 22 Minn. 407.

—— (general, defined). 2 Wend. (N. Y.) 354.

—— (impeachment of witness by proof of).

3 Serg. & R. (Pa.) 337; 11 *Id.* 199.

—— (what testimony not admissible to impeach). 6 Oreg. 212.

—— (putting it in issue, defined). 10 Serg. & R. (Pa.) 55, 61.

—— (of a dangerous person). 26 Ohio St. 162.

CHARCOAL, (in U. S. internal revenue law). 5 Blatchf. (U. S.) 215.

CHARGE.—

§ 1. **In its general sense**, a charge is an obligation or liability. Thus we speak of a district being chargeable to maintain its own highways, and of a pauper being chargeable to the parish or town.

§ 2. **On property.**—More frequently, however, charge is applied to property, and signifies that it is security for the payment of a debt or performance of an obligation. It is a general term, and therefore includes mortgages, liens, writs of execution, &c., but is also applied in a restricted sense to cases where the security has no special name, and where there is not necessarily a personal debt. Thus, if the owner of land agrees that it shall be security for a debt or obligation by himself or another person, that will charge the land, (Fish. Mort. 78); the principal effect of such a charge is to entitle the grantee to take proceedings to obtain a sale of the property charged. *See* HYPOTHECATION.

§ 3. **Charge of debts or legacies.**—Where a person by his will charges his real estate with the payment of any debts or legacies, the executors or trustees may raise such debts or legacies by sale or mortgage of the lands, unless he has devised them to any person for his own benefit subject to the charge, in which case the devisee (if he accepts the devise) must satisfy the debts or legacies, (Wms. Real Prop. 219; Shelf. R. P. Stat. 484;) for this purpose he may sell or mortgage the land.

§ 4. **Equitable assignment.**—Charge is also applied to equitable assignments by way of security. Thus, if A., being entitled to a payment *in futuro* of \$500 from B., and being indebted to C. for \$200, gives C. an order on B. to pay him \$200 out of the \$500, this is an equitable assignment, and would be called a “charge” on the \$500 in B.’s hands, because its operation is to secure the payment of C.’s debt. *See In re Lewer, Exp. Wilkes*, 4 Ch. D. 101.

§ 5. **Declaration of charge.**—By the Stat. 23 and 24 Vict. c. 127, § 28, where a solicitor is employed to prosecute or defend any proceeding in a court, the court may make a declaration that the solicitor is entitled to a charge upon the property recovered or preserved by the proceeding, and the charge is effectual against all persons, except *bonâ fide* purchasers of the property for value without notice. *Dan. Ch. Pr.* 1721. *See Pilcher v. Arden*, 7 Ch. D. 318.

§ 6. **Registered charge.**—Under the Land Transfer Act, 1875, the registered proprietor of freehold or leasehold land may charge it with the payment of money, with or without a power of sale, by executing an instrument of charge in the statutory form, and by having the charge entered on the register. (§ 22; General Rules 20, Form 20.) It has most of the incidents of an ordinary mortgage. (§§ 23–27.) The proprietor of the charge is entitled to a certificate of charge. § 22.

§ 7. **Charge on holding.**—Under the Agricultural Holdings Act, 1875, when a landlord pays to his tenant compensation in respect of improvements effected by the latter on the land, he may obtain from the county court of the district a charge of the amount on the land the effect of which is to make the land liable for the repayment of the amount, by installments, to the landlord, his executors, administrators and assigns, so that where he is merely a limited owner (*e. g.* a tenant for life) the amount will be repaid to him or his personal representatives if his estate comes to an end before the time when the improvement in respect of which the compensation was paid is taken to be exhausted. This time varies with the nature of the improvement. 38 and 39 Vict. c. 92, § 42. *See* AGRICULTURAL HOLDINGS ACT.

§ 8. In **chancery practice**, charges are allegations in a bill of complaint intended either to substantiate the general statement of the plaintiff's case, or to avoid a defence which he anticipates that the defendant will set up. See **BILL OF COMPLAINT**, § 6.

§ 9. In an action for an account a person is said to be charged with sums which he admits or is proved to have received. When he brings in an account showing receipts and payments by him, he is said to charge himself with the receipts, and to discharge himself by the payments. See **DISCHARGE**; **SURCHARGE**.

§ 10. In **criminal law**, a charge is an accusation made by a summons, warrant, information, indictment or the like. And the clerk gives the prisoner *in charge* to the jury by reading the indictment, and they are bound to proceed to deliver him until they are discharged.

§ 11. To **jury**. The instructions given by the court, either to the grand jury before commencing their session, as to their duty, or to the petty jury, after the case on trial has been closed on both sides, are denominated, in either case, the "charge" of the court. See **INSTRUCTIONS**.

CHARGE, (in bankruptcy act). L. R. 9 Q. B. 296.

—— (to a jury). 29 Wis. 125.

—— (in statute requiring judge's charge to be written). 29 Wis. 125, 136.

CHARGE AND ACCUSE, (before a grand jury or magistrate). 12 Cush. (Mass.) 90.

—— (in an indictment under a statute). 2 Car. & P. 436.

CHARGE, POWER TO, (includes power to sell). 8 Com. Dig. 859.

CHARGE AND DISCHARGE.—The old mode of taking accounts in chancery. For an explanation of it, see **Dan. Ch. Pr.** 1173.

CHARGE D'AFFAIRES.—A diplomatic agent, differing from an ambassador or minister in being accredited to the minister, not the sovereign, of the foreign State where he resides, and in representing a minister and not the sovereign of his own State. **Man. L. of N.** 106.

CHARGE, POWER TO, (includes a power to sell). 6 Ves. 793, 797.

CHARGE-SHEET.—A paper kept at a police-station, in England, to receive each night the names of the persons brought and given into

custody, the nature of the accusation, and the name of the accuser in each case. It is under the care of the inspector on duty. This seems to be the same thing as the "blotter" used for the same purpose in this country.

CHARGE TO ENTER HEIR.—In the Scotch law, a writ commanding a person to enter heir to his predecessor within forty days, otherwise an action to be raised against him as if he had entered.—*Bouvier*.

CHARGEABLE, (in a statute). 44 Conn. 210; 11 East 381.

CHARGED, (in a plea). 1 Minn. 241.

—— (under statute, who are). 14 Johns. (N. Y.) 484.

CHARGED AND ASSIGNED MY PROPERTY TO A., (implies what). 5 Paige (N. Y.) 450.

CHARGED IN CUSTODY, (in an action for escape). 11 Mod. 69.

CHARGED IN EXECUTION, (in a statute, meaning of). 4 T. R. 367; 1 East 405.

CHARGED WITH CRIME, (in a criminal statute). 8 Allen (Mass.) 477-8.

CHARGED WITH MY DEBTS, (in a will). 18 Johns. (N. Y.) 31; 13 Wend. (N. Y.) 586; 6 Wheel. Am. C. L. 414; 1 Ves. & B. 260, 272.

CHARGES.—Expenses; costs; but principally such expenses of a suit or legal proceeding as are not included in the costs; it is a wider term than costs.

CHARGES, (covenant to pay). 2 Atk. 541, 542.

—— (for commissions). 78 N. C. 265.

—— (in a receipt). 55 Barb. (N. Y.) 312.

—— (in a statute). 8 East 23; 3 Price 280.

—— (in statute extending jurisdiction). 79 N. Y. 593.

CHARGES PARLIAMENTARY OR OTHERWISE, (includes land-tax). 2 Atk. 542.

CHARGING ORDER.—

§ 1. By 1 and 2 Vict. c. 110, §§ 14-16, and 3 and 4 Vict. c. 82, when judgment has been recovered in an action, a judge at chambers may make an order that any government stock, funds or annuities, or any stock or shares in a public company in England, standing in the name of the judgment debtor in his own right, or in the name of any person as trustee for him, shall stand charged with the payment of the judgment debt. (Sm. Ac. 211; Rules of Court xlv. 1.) The effect is to prevent the transfer of the stock, and to give the judgment creditor all the remedies which he would have been entitled to if the charge had been made in his favor by the judgment debtor, but he cannot enforce it until six months from the date of the order. 1 and 2 Vict. c. 110, § 14; Fish. Mort. 113 *et seq.*

§ 2. As to so-called charging orders under Stat. 23 and 24 Vict. c. 127, see **CHARGE**, § 5. See, also, **DISTRINGAS**; **STOP ORDER**.

CHARITABLE, (defined). 4 C. E. Gr. (N. J.) 313.

—— (as applied to uses). 14 N. Y. 389, 403.

CHARITABLE AND RELIGIOUS, (bequests). 4 C. E. Gr. (N. J.) 313.

CHARITABLE GIFT, (what is). 2 Sim. 437.

CHARITABLE INSTITUTIONS, (defined). 65 Me. 92.

CHARITABLE OR PUBLIC PURPOSES, (when too general to be executed). 1 Sim. & S. 69.

CHARITABLE PURPOSES, (in a will). L. R. 3 Ch. App. 678.

CHARITABLE TRUSTS ACTS (Stat. 16 and 17 Vict. c. 137; 18 and 19 Vict. c. 124; 23 and 24 Vict. c. 136; 25 and 26 Vict. c. 112; and 32 and 33 Vict. c. 110; *see, also*, Sir Samuel Romilly's Act, 52 Geo. III. c. 101,) were passed to constitute a board of commissioners called the "charity commissioners," with powers for inquiring into the nature, objects, condition and management of charities, and for giving advice and directions, and making orders for the administration of charity property, and for authorizing leases, sales, and exchanges of charity lands. A mode of applying to the Chancery Division in matters relating to charities, by petition or summons, in a summary way, is also provided. The acts do not apply to unendowed charities. Tud. Char. Trusts 189; 3 Steph. Com. 74; Dan. Ch. Pr. 1766; Hunt. Suit 246. *See* CHARITY, § 3; OFFICIAL TRUSTEES OF CHARITABLE FUNDS AND CHARITY LANDS; SCHEME.

CHARITABLE USES, (what are). 10 Allen (Mass.) 169, 177; 14 *Id.* 539, 550; 7 Johns. (N. Y.) Ch. 292; 14 N. Y. 380; 2 Barn. & Ad. 744; 7 Com. Dig. 606, 692; 1 Cox Ch. 315; 2 Vern. 453.

— (what are not). 5 Rawle (Pa.) 151; 6 East 329; 6 Taunt. 359.

— (what are not uncertain). 17 Serg. & R. (Pa.) 88.

— (what are, in a will). 4 Wheat. (U. S.) 6; 7 Ves. 79; 16 *Id.* 206.

— (bequests to churches for). 3 Wheel. Am. C. L. 467.

— (jurisdiction of court of chancery over). 3 Pet. (U. S.) 99; 2 Johns. (N. Y.) Ch. 384, 389; 6 Paige (N. Y.) 639.

CHARITABLE USES ACT.—The Act 9 Geo. II. c. 36, which prohibits gifts to charities, of land, or moneys arising from or to be laid out in land, unless made in accordance with the provisions of the act. It is commonly, but inaccurately, known as the "Mortmain Act." *See* Luckraft v. Pridham, 6 Ch. D. 205. *See, also*, MORTMAIN.

CHARITABLE USES AND PURPOSES, (in a will, meaning of). 1 Merw. 55, 86, 92, 93.

CHARITY.—

§ 1. When a person gives money or property for the benefit of the public, or a section of the public, this constitutes a charitable gift, and the donor is called "the founder" of the charity. In practice, however, the term is usually applied to institutions of a permanent character, such as

hospitals, schools, &c. The object must be public, and therefore gifts for the erection or repair of private tombs or monuments (so-called private charities) are not charities in the proper sense of the word. (Wats. Comp. Eq. 42.) Instances of proper charities (sometimes called "public charities") are gifts for the relief of aged, poor, and sick persons; for the relief of the donor's poor relations; for education; for the repair of bridges; towards payment of the national debt, &c. *See* the quaint enumeration in Stat. 43 Eliz. c. 4, from which the legal idea of a charity is taken, and cases cited, Wats. Comp. Eq. 40 *et seq.*; Dan. Ch. Pr. 1760; Tud. Char. Trusts Act, 4.

§ 2. **Ecclesiastical, or eleemosynary.**—When a charity has to be administered with reference to the tenets of a particular religion (*e. g.* where its purpose is education in those tenets, or where its objects must be persons holding those tenets), the charity is said to be ecclesiastical, as opposed to a lay or eleemosynary charity, which is not restricted with reference to any particular religion. Att-Gen. v. St. John's Hospital, 2 Ch. D. 554; Tud. Char. Trusts, and the cases cited.

§ 3. **Endowed charities.**—An endowed charity is one which possesses property from which it derives income, and which was originally given to it for the purpose of being kept as a source of income; a charity, therefore, which is supported wholly or partially by voluntary subscriptions is (wholly or partially) an unendowed charity; and neither money arising from voluntary subscriptions, nor property given to a charity in such a way that it might legally be applied as income, is converted into an endowment merely by being set apart or invested for the purpose of being applied to some defined and specific object connected with the charity. *See* §§ 62 and 66 of the Charitable Trusts Act, 1853; and as to their construction (which is not free from difficulty), The Governors of the Charity for Widows, &c., of Clergymen v. Sutton, 27 Beav. 651; *In re* Sir R. Peel's School, L. R. 3 Ch. 543.

CHARITY (defined). 5 Otto (U. S.) 311; 25 Ohio St. 229; 2 Amb. 651; 4 Com. Dig. 154; 9 Ves. 399.

— (what is included). 25 Ohio St. 229.

— (what is not). 9 Ves. 399.

— (what is not a charitable legacy). 10 Ves. 534.

— (distinction as to public or private). 4 Wheat. (U. S.) 670.

— (as used in statute of 43 Eliz. c. 4). 65 Me. 93.

— (as to jurisdiction of charity commissioners). L. R. 2 Ch. App. 362.

CHARITY, (in Sunday law). 118 Mass. 195, 197.

CHARITY, PRIVATE, (in will, when too indefinite to enable the court to execute it). Turn. & R. 260.

CHARITY, PUBLIC, (a devise to the poor of a parish is). 2 Atk. 88.

CHARTA.—(1) In the civil law, paper, as distinguished from *papyrus*; a written instrument. (2) In old English law, a charter (*q. v.*); a deed; a conveyance of land under seal; any instrument under seal evidencing a contract, covenant, or conveyance; any signal or token by which an estate was held; also, a royal grant of privileges or liberties. See **CARTA**; **CHARTÆ LIBERTATUM**; **MAGNA CHARTA**.

CHARTA CHYROGRAPHATA, or **COMMUNIS**.—An indenture (*q. v.*)

CHARTA DE FORESTA.—See **CHARTÆ LIBERTATUM**.

Charta de non ente non valet (Co. Litt. 36): A charter concerning a thing not in existence avails not.

CHARTA DE UNA PARTE.—A deed-poll.

Charta est legatus mentis: A deed is the representation of the mind.

Charta non est nisi vestimentum donationis: A deed is nothing else than the vestment of a gift.

CHARTA PARTITA.—A charter-party (*q. v.*)

CHARTÆ LIBERTATUM.—These are *Magna Charta* and *Charta de Foresta*. (See 4 Bl. Com. 423.) *Charta de Foresta* is taken from the roll of 25 Edward I., and has a confirmation of that date prefixed to it, similar to that prefixed to *Magna Charta*. This charter, though of infinite importance at the time it was made, contains in it nothing interesting to a modern lawyer, any further than as it gives some specimen of the nature of the institution of forest laws, and the burthens thereby brought on the subject. In this light the charter of the forest is a curious remnant of ancient legislation. It contains sixteen chapters. (1 Reeves c. v. 254; 4 Bl. Com. 423; 4 Br. & Had. 505.)—*Wharton*.

Chartarum super fidem, mortuis testibus, ad patriam de necessitudine recurrendum est (Co. Litt. 36): The witnesses being dead, the truth of charters must of necessity be referred to the country, *i. e.* a jury.

CHARTE.—A chart, or plan, which mariners use at sea.

CHARTEL.—A letter of defiance or challenge to a single combat; also an instrument or writing between two States for settling the exchange of prisoners of war. See **CARTEL**.

CHARTER.—OLD FRENCH: *chartre*; LATIN: *charta*.

This word formerly meant any deed relating to hereditaments, especially deeds of feoffment, (Co. Litt. 7a, 9b,) but it is now always used in the sense of a grant by the sovereign to persons therein designated, of *jura regalia* or other franchises, liberties, property, rights, powers, privileges or immunities. (Grant Corp. 9; Lind. Part. 154.) At the present day the most usual instances of charters are those creating universities and corporations of all kinds. The act of a legislature creating a corporation, is also called a charter. See **CORPORATION**; **LETTERS-PATENT**; **SURRENDER**.

CHARTER, (right of legislature to grant). 9 Johns. (N. Y.) 573.

— (right of State to alter private). 1 Paige (N. Y.) 102.

— (of bank, violation of). 3 Wend. (N. Y.) 609.

— (of R. R. Co., construed). 1 Nev. & M. 690, 734.

— (to build bridge, rights under). 11 Pet. (U. S.) 549.

CHARTER-HOUSE.—Formerly a convent of Carthusian monks in London; now a college founded and endowed by Thomas Sutton. The governors of the charter-house are a corporation aggregate without a head, president, or superior, all the members being of equal authority. 3 Steph. Com. (7 edit.) 14, 97.

CHARTER-LAND.—Otherwise called "book-land," is property held by deed under certain rents and free-services. It in effect differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same. 2 Bl. Com. 90. See **BOOK LAND**.

CHARTER OF PARDON.—In English law, an instrument under the great seal, by which a pardon is granted to a man for a felony or other offence.

CHARTER-PARTY.—LATIN: *carta partita*, an instrument or deed cut in two. Apparently the ship-owner's copy and the merchant's copy were originally written on the same sheet of paper or parchment, which was then cut in two, in the same manner as an indenture (*q. v.*)

A written agreement, not usually under seal, by which a ship-owner lets an entire ship, or a part of it, to a merchant for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the merchant undertakes to pay as freight for their carriage. (Maud. & P. Mer. Sh. 227.) The principal

stipulations in an ordinary charter-party refer to the places of loading and delivery, the mode and time of paying the freight, the number of laying days (*i. e.* the time allowed the freighter for loading and unloading), and the rate of demurrage (*q. v.*) (*See* the form, *Id.* 228.) Charter-parties are of two kinds, (1) Where the control of the vessel is retained by the owner; and (2) where the vessel is surrendered to the charterer, who finds master and crew, and takes entire charge of the voyage.

CHARTER-PARTY, (defined). 2 Munf. (Va.) 268.

—— (who responsible under). 3 Wheel. Am. C. L. 144.

CHARTER ROLLS.—Ancient English records of royal charters, granted between the years 1199 and 1516.—*Burrill*.

CHARTERED SHIP.—A ship hired or freighted; a ship which is the subject matter of a charter-party.

CHARTERER.—A person who charters or hires a ship for a voyage or for a certain period.

CHARTIS REDDENDIS.—An ancient writ which lay against one who had charters of feoffment intrusted to his keeping and refused to deliver them.—*Reg. Orig.* 159.

CHASE.—NORMAN-FRENCH: *chace* (Britt. 138 b), from *chacier*; ITALIAN: *cacciare*, to hunt, most probably from a Romanic form, *captiare*, of the Latin *captare*, to pursue, hunt. 1 Diez Worth. 97.

A district of land privileged for wild beasts of chase, with the exclusive right of hunting therein. It resembles a forest (*q. v.*), except that it has no peculiar laws or courts. A chase belonging to the crown is called a "chase royal;" a chase in the hands of a subject (whether by royal grant or by prescription) is sometimes called a "free (or frank) chase;" it is a franchise (*q. v.*), and may belong either to the owner of the land over which the right of chase exists, or to another person. Co. Litt. 233 a; Manw. 6 b; Com. Dig., Chase, B.

CHASE, CAPTURE AND MAN PRIZES, (leave to, in a policy of insurance). 6 East 51.

—— (in a policy of insurance). 2 Taunt. 428.

CHASTE CHARACTER, (in act punishing abduction). 8 Barb. (N. Y.) 603.

—— (in statute punishing seduction). 5 Iowa 389, 430; 18 *Id.* 372; 1 Park. (N. Y.) Cr. 453, 474; 5 *Id.* 254.

CHASTITY.—Purity, or freedom from unlawful sexual intercourse. The law justifies a woman killing one who attempts to ravish her, and so, too, the husband or

father may justify killing a man who attempts a rape upon his wife or daughter; but not if he takes them in adultery by consent, for the one is forcible and felonious, but not the other. (1 Hale P. C. 485, 486; 4 Broom & H. Com. 214.) In the latter case, however, the homicide may be excusable. Words attributing want of chastity to a woman are actionable *per se*. 2 Conn. 707; 5 Gray (Mass.) 5.

CHATTEL.—

§ 1. **Chattels real**.—Chattel is a term used to denote any kind of property which, having regard either to the subject-matter or the quantity of interest therein, is less than a freehold. Any estate in lands and tenements which does not amount to freehold is consequently a chattel, but, inasmuch as it concerns or "savours" of the realty, it is called a chattel real, to distinguish it from things which have no concern with land, viz., mere movables and rights connected with them, all of which are called "chattels personal." Chattels real include estates for years, at will, by sufferance, and various interests of uncertain duration. 1 Steph. Com. 280, Co. Litt. 118 b. *See* ESTATE; INTEREST.

§ 2. **Chattels personal**.—The term "chattels personal" is generally applied to tangible things, such as furniture, jewels, animals, and the like. Choses in action (*q. v.*) and incorporeal personal property, such as copyrights, patent rights, and the like, are not generally included in the term chattels. *See* Litt. §§ 281, 282, where he treats of debts and duties as distinct from chattels personal, such as a horse. Coke, however, talks of chattels in possession and chattels in right, which latter appear to be the same as choses in action. Co. Litt. 182 a. *See* PERSONAL PROPERTY.

CHATTEL, (real and personal, defined). 19 Johns. (N. Y.) 73.

—— (a bill of exchange is). 6 Bing. 363; 4 Moo. & P. 36.

—— (a bond is). 1 Atk. 165, 171.

—— (embraces live animals and slaves).

12 Ired. (N. C.) L. 61.

—— (includes term for years). 6 Blackf. (Ind.) 335.

—— (in indictment for larceny). 55 Me. 200; 1 Dougl. (Mich.) 42; 13 Johns. (N. Y.) 90.

CHATTEL INTERESTS.—The difference between freeholds and non-freeholds, or chattel interests, consists, for the most part, in

the fixity or non-fixity of their duration. It is the latter property, viz., uncertainty, that characterizes a freehold; it is the former, viz., certainty, that characterizes a non-freehold. Hence every tenancy of a definite duration is a term, i. e. a period accurately ascertained during which the interest or estate is to endure. The non-freeholds are deemed merely chattel interests, and differ from freeholds not only in quantity but in order and kind; for freeholds are considered of greater interest than non-freeholds, and, therefore, if a term of 1000 years and an estate for life vest in the same person, in the same right, the term will merge in the life estate, unless an intervening estate prevent such an union of interests. Chattel interests devolve upon the personal representatives of the owner. Five species of estates rank as chattel interests: (1) for years; (2) from year to year; (3) at will; (4) by *elegit*, and (5) on sufferance.—*Wharton*.

CHATTEL MORTGAGE.—A mortgage of chattels personal, or personal property. It differs from a pledge in that the possession of the property need not pass from the mortgagor, and in that the title to the property passes at once to the mortgagee upon default by the mortgagor, whereas the pledgee must have possession or he gets no lien, and even after the pledgor's default he can only sell the pledge, and cannot at the sale (as a mortgagee can) become himself the purchaser. But these distinctions have been modified somewhat by statute in the several States. In England the instrument corresponding to our chattel mortgage is called a "bill of sale by way of mortgage." See **BILL OF SALE**, § 4, and *n*.

CHATTEL MORTGAGE, (does not import a sealed instrument). 8 W. Va. 36, 40.

—— (distinguished from "pledge"). 36 Cal. 414, 441; 3 Blackf. (Ind.) 309; 5 *Id.* 320.

CHATTEL OR VALUABLE SECURITY, (in a statute). 2 Q. B. D. 157, 163.

CHATELS, (defined). 2 Watts (Pa.) 61, 65; Love. Wills 28, 29.

—— (what are). 5 Wheel. Am. C. L. 269; 11 Co. 50; 1 Shep. Touch. 97.

—— (means personal estate). 2 T. R. 659 b.

—— (comprehends things in action). 1 Atk. 165, 177.

—— (annual fruits of annual labor are). 1 Harr. (N. J.) 81.

—— (growing trees are). 1 Ld. Raym. 182.

—— (improvement rights are). 4 Yeates (Pa.) 300.

—— (includes a lease for years). 15 Mass. 445.

—— (in an indictment for larceny of bank bills). 1 Doug. (Mich.) 42.

—— (in justice's act). 6 Blackf. (Ind.) 335.

—— (personal). 2 Green (N. J.) 268.

CHATELS, (personal and real, distinguished, 19 Johns. (N. Y.) 73.

—— (taxation of). 6 Vr. (N. J.) 282.

—— (what will pass in a will, under). 1 Chit. Gen. Pr. 90; Lov. Wills 29.

CHATELS OR GOODS, (money is not, under the larceny statute). 1 Leach C. C. 242, 468.

CHATELS, GOODS AND EFFECTS, (value of fixtures may be recovered under). 4 Barn. & Ald. 206.

CHATELS, PERSONAL, (includes a bill of exchange). 1 Barn. & Ald. 218, 221.

CHAUD-MEDLEY.—See **CHANCE-MEDLEY**.

CHAUNTRY.—See **CHANTRY**.

CHAUNTRY-RENTS.—Money paid to the crown by the servants or purchasers of chauntry-lands. 22 Car. II. c. 6.

CHEAT.—A generic term for the act of fraudulently obtaining the property of another by any deceitful practice not amounting to felony, but of such a nature that it directly affects, or may directly affect, the public at large. Thus, selling by a false weight or measure, even to a single person, is a cheat, while selling short measure or weight (no false weights or measures being used) is not, because it only affects the person actually defrauded. So, maiming one's self in order to have a pretext for begging, is a cheat. See **FALSE PRETENCES**.

CHEAT, (synonymous with "swindler"). 2 Mass. 408.

—— (what is indictable). 7 Johns. (N. Y.) 201; 12 *Id.* 292; 14 *Id.* 371; 9 Cow. (N. Y.) 579.

—— (conspiracy to). 6 Wheel. Am. C. L. 3.

—— (to call one a cheat not actionable). 1 Chit. Gen. Pr. 44.

CHEAT AND DEFRAUD, (defined). 1 Cush. (Mass.) 227; 5 Wheel. Am. C. L. 460.

CHEAT AND DEFRAUD THE JUST AND LAWFUL CREDITORS OF A B., (in an indictment, is bad, as being too general). 4 Car. & P. 592.

CHEATERS, or ESCHEATERS.—Officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a cheater came to signify a fraudulent person, and thence the verb to cheat was derived.—*Wedgw.*

CHEATING, (accusation in slander). 2 Salk. 694.

—— (in weight, injury to public). 1 Dall. 47.

CHEATING AND DEFRAUDING, (in an indictment for conspiracy). 16 Gray (Mass.) 223.

CHECK, or CHEQUE.—To check is to control or verify, especially applied to that kind of regulation or supervision which is exercised by one department of an office over another. The original meaning of the word was to stop, derived from the expression "check-mate" (Persian *sháh-mát*, "the king is dead," used in the game of chess). Hence check, or cheque, was applied to slips of paper of which a piece was torn off to serve as a counterfoil or tally. For a sketch of the history of checks, see Cohn "Zur Geschichte der Checks," *Zeitschrift für vergl. Rechtsw.* i. 117; and for an account of the functions which they fill in the money market, see Jevons on Money, 240 *et seq.*

§ 1. A check is an order addressed by a person to his banker, or to a bank, requiring the payment of a certain sum to a person therein indicated, or to his order, or to the bearer, on demand. The person making the check is called the "drawer," and the person to whom it is payable, the "payee."

§ 2. A check resembles a bill of exchange in many respects: thus, it is a negotiable instrument, unless its negotiability is qualified or restrained; it may be made payable to order or bearer; and the liability of the drawer resembles that of the drawer of a bill. (*Keene v. Beard*, 8 C. B., N. S. 372; *Eyre v. Waller*, 5 H. & N. 460; 29 L. J. Ex. 246.) But there are several special rules and usages applying to checks and not to bills, and it is, therefore, not strictly accurate to say (as is sometimes done), (*Byles' Bills* 13; *Hopkinson v. Forster*, L. R. 19 Eq. 74,) that a check is an inland bill of exchange; thus, the drawer of a check is not discharged by the holder's failure to present it in due time, unless he has sustained actual prejudice from the delay, as by the failure of the banker; again, in England, a banker who pays a check to order on a forged indorsement of the payee's name, is not liable to his customer for the amount (*Byles* 19; Stat. 16 and 17 Vict. c. 59, § 19. The Crossed Cheques Act, 1876, § 12, also protects a banker who collects an ordinary crossed check for his customer, although there may be some defect in the latter's title (*Matthiessen v. London and County Bank*,

5 C. P. D. 7,) but this would not be so if the check were crossed "not negotiable"); and the negotiability of a check may be restrained by means not applicable to bills of exchange.

§ 3. **Crossed checks.**—The negotiability of a check may be restrained, in England, by crossing it. When the check bears across its face two parallel lines (with or without the words "and company," or an abbreviation thereof), it is said to be crossed "generally." When it bears across its face the name of a banker, it is said to be crossed "specially," and to be crossed to that banker. To a crossing, whether general or special, may be added the words "not negotiable."

§ 4. **General and special crossing.**—When a check is crossed generally, the banker on whom it is drawn must not pay it across the counter, but can only pay it to another banker; in other words, the holder of such a check cannot obtain payment of it unless he has an account with some banker. When a check is crossed specially, the banker on whom it is drawn can only pay it to the banker to whom it is crossed; in other words, the holder of that check cannot obtain payment of it unless he has an account with the banker to whom it is crossed.

§ 5. **"Not negotiable."**—When a check bears the words "not negotiable," in addition to the crossing, the holder of it cannot give a transferee a better title than he has himself. Crossed Cheques Act, 1876, repealing 19 and 20 Vict. c. 25, and 21 and 22 Vict. c. 79.

CHECK, (defined). 5 Wheat. (U. S.) 335; 13 La. Ann. 300; 1 Gray (Mass.) 605; 4 Johns. (N. Y.) 296; 21 Wend. (N. Y.) 373; 5 Sandf. (N. Y.) 326.

— (is a negotiable instrument). 7 T. R. 430.

— (distinguished from "bill of exchange"). 2 Story (U. S.) 502; 46 Ga. 487; 8 Bush. (Ky.) 357; 3 Johns. (N. Y.) 259; 5 Ohio St. 13, 17; 17 Ohio St. 82, 125; 70 Pa. St. 474.

— (resembles inland bill). 4 Cal. 35; 14 La. Ann. 457; 30 N. H. 256; 3 Johns. (N. Y.) Cas. 5; 6 Cow. (N. Y.) 484; 21 Wend. (N. Y.) 372; 25 *Id.* 673.

— (how construed). 3 Johns. (N. Y.) Cas. 5; 3 Wend. (N. Y.) 302.

— (forged). 4 Dall. (U. S.) 234; 4 Johns. (N. Y.) 296.

— (given when no funds in bank). 1 Hall (N. Y.) 78.

— (liability of drawer). 3 Burr. 1517.

— (must be drawn on a bank or banker). 3 N. Y.) 93.

— (nature of, before acceptance).—1 Daly (N. Y.) 500.

— (presentation of). 3 Johns. (N. Y.) Cas. 259; 10 Wend. (N. Y.) 304; 20 *Id.* 192; 2 Hill (N. Y.) 425; 1 Hall (N. Y.) 68; 2 *Id.* 459.

— (payment of, must be demanded within reasonable time). 6 Cow. (N. Y.) 490.

— (post-dated, when due). 20 Wend. (N. Y.) 205; 10 *Id.* 304; 20 *Id.* 549; 70 Pa. St. 474.

CHECK, (rights and liabilities of parties). 3 Moore 635.

— (right of agent to sue on). 7 Cow. (N. Y.) 174.

— (under charter, when bank bound to pay). 1 Baldw. (U. S.) 370.

— (when treated as nullity). 1 Hall (N. Y.) 56.

CHECK-BOOK.—A book containing blank checks, and an inner margin called a "stump," upon which to enter a memorandum of the date and amount of the check, and the name of the payee, for reference after the check itself is filled out and torn off. This memorandum, in connection with the oath of the party, is evidence of the giving of the check.

CHECK-LIST, (of work done, when evidence). 16 Wend. (N. Y.) 586.

CHECK-ROLL.—A list or book, containing the names of such as are attendants on, or in the pay of, the queen or other great personages as their household servants. 19 Car. II. c. 1.

CHEMIN.—See **CHIMIN**.

CHEMIS.—In old Scotch law, a chief dwelling or mansion house.

CHEST, (in an indictment). 2 Hale P. C. 183.

CHEVAGE.—A sum of money formerly paid by villeins to their lords in acknowledgment of their bondage. It seems also to have signified a sum of money paid to a man of power and might for his protection. (Co. Litt. 140a; Termes de la Ley, s. v.) It comes from the Norman-French, *chief*, *chef*, a head or superior. Loysel Inst. Cout. Gloss.

CHEVANTIA.—A loan or advance of money upon credit; also goods, stock, &c.

CHEVISANCE.—An agreement or composition; an end or order set down between a creditor or debtor; an indirect gain in point of usury, &c.; also an unlawful bargain or contract.—*Wharton*.

CHEVITLÆ.—In old records, pieces of ground, or heads at the end of ploughed lands.—*Cowell*.

CHEZÉ.—A homestead or homesfall which is accessory to a house.

CHICANE.—The use of tricks and artifice.

CHIEF.—A principal person or thing; one high in power or importance; the best or most important of a number of things.

CHIEF BARON.—See **LORD CHIEF BARON**.

CHIEF CLERKS of the master of the rolls and vice-chancellors are officers who trans-

act the principal judicial business in the chambers of the Chancery Division of the English High Court. There are three to each judge. They act as the deputies of the judges in making orders relating to the ordinary conduct of an action, such as orders for time, amendment, discovery, &c., and in questions of administrative detail, such as those relating to the maintenance, guardianship, &c., of infants, and the management of settled estates and companies in liquidation (*e. g.* orders for calls and the adjudication and payment of claims by creditors). They also answer inquiries and take accounts referred to them by the judges; the result is embodied in what is called the "chief clerk's certificate," and they settle conveyances and other documents requiring the sanction of the judge, with or without the assistance of the conveyancing counsel (*q. v.*) The chief clerks and their subordinates are merely deputies of the judge; consequently all orders, &c., are drawn up in the name of the judge, not of the chief clerk, and every party to the proceeding is entitled as a matter of right to bring the question before the judge in person. The chief clerks are assisted by junior clerks, who prepare the draft certificates, minutes of orders, &c., vouch accounts, and hear summonses and applications relating to matters of routine, such as summonses for time and affidavits of documents; there are also additional and assistant clerks. Second Rep. of Leg. Dep. Comm. (1874) 58; Dan. Ch. Pr. 1042; Stat. 15 and 16 Vict. c. 80. See **MASTER**.

CHIEF, EXAMINATION OF WITNESS IN.—Every witness who gives his testimony in a trial at *Nisi Prius*, is first examined by the counsel of the party on whose behalf he is called; and the first examination is termed his "examination in chief." He is then subject to cross-examination by the counsel on the other side, which cross-examination may be in its turn succeeded by a re-examination by the counsel who originally called him. See **EXAMINATION**.

CHIEF JUDGE.—The judge of the London Bankruptcy Court. The Bankruptcy Act, 1869, provides for the appointment of one of the commissioners of the old London Bankruptcy Court as the first chief judge of the present court, and for the appointment of subsequent judges. (§§ 61, 128.) He may delegate his powers to the registrars of the court. § 67.

CHIEF JUSTICE.—The presiding or principal judge of a court of justice. See **LORD CHIEF JUSTICE**.

CHIEF JUSTICIAR.—Under the early Norman kings, the highest officer in the kingdom next to the king.—*Bouvier*.

CHIEF LORD.—The immediate lord of the fee, to whom the tenants were directly and personally responsible. See **IN CAPITE**.

CHIEF PLEDGE.—A borsholder (*q. v.*)

CHIEF-RENTS.—The annual payments of freeholders of manors; also denominated "quit rents" (*quieti reditus*), because thereby the tenant goes free of all other services. 2 Bl. Com. 42; see 27 and 28 Vict. c. 38. See RENT.

CHIEF, TENANT IN.—All the land in the kingdom was supposed to be holden mediately or immediately of the king, who was styled the lord paramount or lord above all; and those that held immediately under him, in right of his crown and dignity, were called his tenants "*in capite*" or "*in chief*," which was the most honorable species of tenure, but at the same time subjected the tenant to greater and more burdensome services than inferior tenures did.—*Brown*. See IN CAPITE.

CHIEFRIE.—A small rent paid to the lord paramount.

CHIEVANCE.—Usury.

CHILD—CHILDREN.—

§ 1. As to the status of children in civil law, see INFANTS and MINORS. The criminal law contains various provisions for the protection of children. See ABANDONMENT, § 4; ABDUCTION; CRUELTY. See, also, AFFILIATION; GUARDIAN; MAINTENANCE; NECESSARIES; PARENT AND CHILD.

§ 2. As a technical term, in legal instruments, "child" is generally construed to mean a legitimate, as opposed to an illegitimate, child (see BASTARD). Hence, where a testator, having married a woman by whom he had had illegitimate children, but no legitimate children, left his property to "my children by her," it was held that the illegitimate children could not take. (*Dorin v. Dorin*, L. R. 7 H. L. 568.) If the testator had used words sufficient to identify the children as *personæ designatæ*, the gift would have been effectual in their favor.

§ 3. There is a distinction to be observed in the use of the word "child" in statutes passed for the protection of children, and its use in the law of descent and distribution. In the former case, "child" means a person of tender years, without regard to parentage, while in the law of wills and intestacy age has nothing to do with the question, and parentage everything.

§ 4. Children are *legitimate* when born in lawful wedlock, or within a competent time thereafter; *illegitimate*, *natural* or *bastards* (*q. v.*) when not so born; *posthumous*, when born after the death of the father.

CHILD, (defined). 4 Com. Dig. 154; 3 Wend. (N. Y.) 521.

— (not synonymous with "minor"). 4 Tex. App. 599.

— (a bastard is not). 5 Mod. 169; and see 6 Ves. 43.

— (in a devise). 10 Barb. (N. Y.) 388; 4 Paige (N. Y.) 293.

— (in a statute). 83 Pa. St. 89, 97.

— (in statute of descents). 82 Ill. 505.

— (in a will). 3 Barb. (N. Y.) 385; Amb. 701; 1 Atk. 431, 434.

— (is a word of purchase in a will). 19 Gratt. (Va.) 130, 328.

— (when female ceases to be, within statute respecting rape). 22 Ohio St. 102.

— (when killing, is homicide). 5 Car. & P. 539.

CHILD AND CHILDREN, (in a will). 1 Meriv. 654.

CHILD, BASTARD, (rule of descent). 42 Conn. 491.

CHILD, CHILDREN, (adopted). 115 Mass. 262.

— (in a will). 8 R. I. 69; 8 Com. Dig. 470.

— (in statute of descents). 2 Gray (Mass.) 536; 103 Mass. 289.

CHILD, ELDEST, (in a will). 6 Ves. 42, 48.

CHILD, GRANDCHILD, (in a will, take *per stirpes*). 1 East 120; and see 3 Ves. & B. 59, 67, 69, 113.

CHILD OF A., (in a notice to overseer of chargeable pauper). 8 Pick. (Mass.) 388.

CHILD, SON, ISSUE, (*prima facie* means legitimate). 1 Ves. & B. 422.

CHILD, SUCH, (in a deed of settlement). 1 T. R. 432.

CHILD, YOUNGER, (who is). 1 P. Wms. 245.

CHILDISH, (defined). 4 Neb. 115, 120.

CHILDREN, (defined). 39 Ala. 24; 64 Id. 500; 22 Ohio St. 102.

— (natural meaning). 4 Paige (N. Y.) 293.

— (technical meaning). 2 Metc. (Ky.) 335, 469.

— (synonymous with "issue," "heirs," or "descendants"). 1 Sumn. (U. S.) 359; 2 Duv. (Ky.) 335; 28 Eng. L. & Eq. 267; 4 T. R. 737, 749; 5 Munf. (Va.) 440.

— (not synonymous with "issue"). 1 P. Wms. 534.

— (distinguished from "heirs"). 14 Allen (Mass.) 204; 3 Wend. (N. Y.) 503; 4 Paige (N. Y.) 293.

— (in a bequest). 33 Me. 464.

— (in a conveyance). 55 N. H. 392; 8 Humph. (Tenn.) 551.

— (in a deed of settlement, means issue). 1 Ves. Sr. 196, 200.

— (in a devise). 1 Dana (Ky.) 171; 2 Mass. 62; 2 Beas. (N. J.) 236; 2 Harr. (N. J.) 290; 1 McCart. (N. J.) 159; 8 Com. Dig. 425, 470; 2 Id. 194; 6 C. E. Gr. (N. J.) 84; 8 Id. 26; South. (N. J.) 305; 11 Johns. (N. Y.) 351; 58 Pa. St. 412; 4 Heisk. (Tenn.) 293.

— (in a marriage settlement). 2 Ves. 347; 2 Wils. 336.

— (in a notice for removal of paupers). 1 Me. 329.

— (in poor law). L. R. 9 Q. B. 254.

CHILDREN, (in statute of distribution). 4 Pick. (Mass.) 95; 1 Edw. (N. Y.) 43; 79 N. Y. 246; 2 Bay (S. C.) 293.

—— (in statute of wills). 5 Biss. (U. S.) 166.

—— (in a will). 22 La. Ann. 343; 3 Barb. (N. Y.) 385; 3 Barb. (N. Y.) Ch. 475; 1 Edw. (N. Y.) 174; *Id.* 354; 7 Paige (N. Y.) 332; 2 *Id.* 11; 3 N. Y. 538; 37 *Id.* 42; 78 N. Y. 275; 19 Ohio St. 30; 2 So. Car. 510; 1 Hen. & M. (Va.) 289; 3 Munf. (Va.) 20; 5 *Id.* 440; 19 Gratt. (Va.) 130, 328; 2 Am. Rep. 369; 2 Atk. 220; 1 Barn. & Ad. 324; L. R. 10 C. P. 701; 4 Ch. D. 600; L. R. 6 H. L. 265; 7 *Id.* 568; 2 Vern. 545; 5 Ves. 136; Willes 352.

—— (when take *per capita*). 10 Ves. 166, 176; 13 *Id.* 339.

—— (when take *per stirpes*). 2 Vern. 50.

—— (when includes "after-born children"). 25 Ga. 549; 11 Gill & J. (Md.) 185; 4 Heisk. (Tenn.) 293; 2 Vern. 105; 1 Taunt. 296.

—— (when excludes "after-born children"). 5 Paige (N. Y.) 172; 3 Munf. (Va.) 20.

—— (when includes "posthumous children"). 4 Kent Com. (12 edit.) 413; 5 Burr. 2703; 2 Meriv. 382; 2 Ves. 673; 8 Com. Dig. 470.

—— (when includes "grandchildren"). 19 How. (U. S.) 355; 3 Wall. Jr. (U. S.) 32; 3 Port. (Ala.) 452; 25 Ga. 549; 9 B. Mon. (Ky.) 204; 12 *Id.* 121; 7 Bush (Ky.) 645; 9 Dana (Ky.) 1; 4 Litt. (Ky.) 349; 2 Metc. (Ky.) 466; 469; 4 *Id.* 340; 2 McCart. (N. J.) 194; 1 Edw. (N. Y.) 354; 7 Paige (N. Y.) 328; 4 Ired. (N. C.) Eq. 102; 5 *Id.* 421; 6 Jones (N. C.) Eq. 365; 2 So. Car. 510; 1 Coldw. (Tenn.) 253; 4 Ves. 437, 692, 698; 3 Ves. & B. 59, 69.

—— (when does not include "grandchildren"). 36 Ala. 594; 30 Ga. 167; 7 Bush (Ky.) 644; 4 Metc. (Ky.) 339; 29 Md. 443, 458; 6 C. E. Gr. (N. J.) 84; 2 Bradf. (N. Y.) 172; 1 Edw. (N. Y.) 174; 84 N. Y. 520; 7 Paige (N. Y.) 328; Phil. (N. C.) Eq. 160; 83 Pa. St. 478; 3 Phil. (Pa.) 438; 4 Watts (Pa.) 82; 2 Whart. (Pa.) 376; 8 R. I. 69; L. R. 9 Q. B. 254; 2 Vern. 107; 10 Ves. 195, 200.

—— (when includes "illegitimates"). 5 Biss. (U. S.) 166; 5 Conn. 228; 42 *Id.* 491, 495; 1 McCart. (N. J.) 159; 16 Hun (N. Y.) 143, 151; 20 *Id.* 70, 71; 2 Paige (N. Y.) 11; 5 Wheel. Am. C. L. 325; 1 Madd. Ch. 431; 2 Meriv. 421.

—— (when does not include "illegitimates"). 2 Gray (Mass.) 535; 8 Miss. 107; 3 Barb. (N. Y.) Ch. 466; 2 Paige (N. Y.) 13; 9 *Id.* 81; 1 Bail. (S. C.) Eq. 351; 1 Chit. Gen. Pr. 62; 1 Russ. & M. 581; 1 Turn. & R. 313, 314; 5 Ves. 530; 7 *Id.* 453, 458; 17 *Id.* 528; 18 *Id.* 288.

—— (when does not include "step-children"). 1 Bradf. (N. Y.) 252; 1 Edw. (N. Y.) 41; 8 Paige (N. Y.) 375; 23 Wend. (N. Y.) 513.

CHILDREN AND GRANDCHILDREN, (take *per capita*). 1 P. Wms. 342.

—— (take under a devise to "issue"). 3 Ves. 421.

—— (does not include "great-grandchildren"). 3 Ves. & B. 59. To the contrary, 5 Binn. (Pa.) 601.

CHILDREN AND ISSUE, (in statute of descent). 2 Bush (Ky.) 157.

CHILDREN AND THEIR CHILDREN, (in a will, are words of limitation). 16 East 399.

CHILDREN AND THEIR HEIRS, (includes "grandchild"). 2 Yeates (Pa.) 414.

CHILDREN BORN OF HER BODY, (words of purchase, in a will). 3 Pick. (Mass.) 363.

CHILDREN, FOR DEFAULT OF SUCH, (means for default of such issue). 3 T. R. 484, 493.

CHILDREN FOR EVER, (in a devise, used in the sense of heirs). 8 Bush (Ky.) 434.

CHILDREN, GRAND, (a posthumous grandchild entitled to take under a devise to). 5 Serg. & R. (Pa.) 38.

CHILDREN, IN CASE THEY LEAVE NO, (in will, construed). 1 Barn. & Ad. 324.

CHILDREN, ISSUE, HEIRS OF THE BODY, (distinguished). 10 Mod. 370, 376.

CHILDREN, LEGITIMATE, (in a will). 16 Ves. 413.

CHILDREN, MY, (in a will). 1 Swanst. 195, 198.

CHILDREN OF A, (under will, who are). 6 Johns. (N. Y.) 185; 4 Paige (N. Y.) 53; 3 Wend. (N. Y.) 503; 5 Serg. & R. (Pa.) 38; 14 Ves. 576.

CHILDREN OF A'S BODY, (in a will). 2 Atk. 220.

CHILDREN OF PERSONS DULY NATURALIZED, (in a statute). 2 Kent Com. (12 edit.) 51.

—— (in a will). 10 Ves. 166.

CHILDREN OR CHILD, (synonymous with "issue"). 1 Barn. & Ald. 713; 2 Sim. 319.

CHILDREN OR ISSUE, (in a will). 4 Ch. D. 61.

CHILDREN OR THEIR ISSUE, (in a will). 5 Ch. D. 494, 622.

CHILDREN'S CHILDREN, (in a will). 5 Ch. D. 183.

CHILDREN THEN LIVING, (in a will). 4 Ves. 693.

CHILDREN, TO A AND HIS, (in a devise). 4 Paige (N. Y.) 293.

CHILDREN, TO THE THREE, OF A, (four children, all born before the date of the will, entitled to take). 19 Ves. 125.

CHILDREN WHICH I MAY HAVE BY A, LIVING AT MY DECEASE, (natural children who had acquired the reputation of being his children, take). 1 Ves. & B. 422.

CHILDREN WHO SHALL ATTAIN TWENTY-ONE, (in a will). L. R. 10 Ch. D. 25.

CHILDREN, YOUNGER, (in marriage settlement). 2 Atk. 457.

CHILDWIT, or CHILDWITE.—A fine or penalty of a bond-woman unlawfully begotten with child.—*Cowell*.

CHILTERN HUNDREDS.—A member of the House of Commons cannot resign his seat. He may, however, become disqualified by acceptance of office of profit under the crown. A member, therefore, usually vacates his seat by the acceptance of the stewardship of the Chiltern Hundreds, or some other nominal office in the gift of the chancellor of the exchequer. The practice began about the year 1750; but the duties of the stewardship have long since ceased, and the office is but retained to serve this particular purpose. The Chiltern hills are a range of chalk eminences separating the counties of Bedford and Hertford, passing through the mid-

dle of Bucks from Tring in Hertfordshire to Henley in Oxfordshire. Formerly these hills were covered with thick beechwood, and sheltered numerous robbers; to put these marauders down, and protect the inhabitants of the neighborhood from their depredations, an officer was appointed under the crown, called the "Steward of the Chiltern Hundreds," which were Burnham, Desborough and Stoke. The clump of noble "Burnham Beeches" remains to remind us of the old stewardship duties. The crown, for the convenience of the house at large, is always ready to confer on any member "the Stewardship of Her Majesty's Chiltern Hundreds, the Stewardship of the Manor of Poyning, of East Hendred and Northstead, or the Escheatorship of Munster," sinecures which he continues to hold till some other member solicits a similar accommodation. (Dod's Parl. Comp.; 2 Steph. Com. (7 edit.) 381.)—*Wharton*.

CHIMIN.—A way, which is either the queen's highway (*chiminus reginæ*), or a private way; the first is that over which the subjects of England, and all others under the protection of the crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have liberty to pass over the land of another, by prescription or charter. This is divided into *chimin in gross*, where a person holds a way principally and solely in itself, and *chimin appendant*, where a person has it as appurtenant to some other thing; as if he rent a close or pasture, with covenant for ingress and egress through and over other land, over which otherwise he might not pass. (Kitch. 117; Co. Litt. 56.)—*Wharton*.

CHIMINAGE, or PEDAGIUM.—Toll due by custom for having a way through a forest. Co. Litt. 56.

CHIMNEY-MONEY, or HEARTH-MONEY.—A crown duty for every fire-place in a house. (14 Car. II. c. 2.) Long since repealed.

CHIPPING-AVEL, or CHEAPING-AVEL.—Toll for buying and selling.

CHIRCHGEMOT, CHIRGEMOT, or KIRMOTE.—A synod; a meeting in the church or vestry.—*Blount*.

CHIROGRAPH, CHIROGRAPHER.

§ 1. Chirograph anciently signified a deed of two parts which were written on the same paper or parchment, with the word *chirographum* in capital letters between the two parts. The paper or parchment was then cut through the middle of the letters, and a part given to each party. If the cutting was indented, the deed was an indenture. 2 Mad. Form. 29; Co. Litt. 143 b, and note.

§ 2. Of fine.—When fines of land were in use, the last step in the process of levying a fine was the chirograph, which was an engrossment of the substance of the whole matter, beginning, *Hæc est finalis concordia*, and was retained by the purchaser as one of his title-

deeds. It was conclusive evidence of the fine. The officer who made the engrossment was called the "chirographer." *Ley's Case*, 5 Co. 39 a; *Wms. Seis.* 107; *Mad. Form.* 217. See FINE.

CHIROGRAPHER OF FINES.—See CHIROGRAPH, § 2.

Chirographum apud debitorem repertum præsumitur solutum: A deed found with the debtor is presumed to be paid.

CHIRURGEON.—The ancient denomination of a surgeon.

CHIVAGE.—See CHEVAGE.

CHIVALRY.—Knights' service (*q. v.*) See, also, GUARDIAN.

CHIVALRY, COURT OF.—This court was anciently held as a court of honor, merely, before the earl-marshal, and as a criminal court before the lord high constable, jointly with the earl-marshal. It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armor, precedence, and other distinctions of families. It is now grown entirely out of use, on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record. (3 Bl. Com. 68; 4 Br. & H. Com. 360 n.)—*Wharton*.

CHOICE OF ARTICLES, (in a will). 13 Serg. & R. (Pa.) 348.

CHOICE OF LAND, (in a will). 14 Serg. & R. (Pa.) 84, 100.

CHOOSE TO RESIDE ON THE PLACE, (in a devise). 2 Chit. 529.

CHOP-CHURCH.—A word mentioned in a statute of King Hen. VI. by the sense of which it was in those days a kind of trade, and by the judges declared to be lawful. But Brooke in his abridgment says, it was only permissible by law. It was, without doubt, a nickname given to those who used to change benefices, as to "chop" and "change" is a common expression. (9 Hen. VI. c. 65.)—*Jacob*.

CHORAL.—In ancient times a person admitted to sit and worship in the choir; a chorister.

CHOREPISCOPI.—Bishops of the country in the early times of the church.

CHOSE.—

A chose is a chattel personal (*Wms. Pers. Prop.* 4; see CHATTEL); and is either in possession or in action.

§ 1. In possession.—Choses in possession are movable chattels, such as furniture, horses, and, generally, all goods and merchandise.

§ 2. In action. Legal and equitable.—A chose in action is a right of proceed-

ing in a court of law, to procure the payment of a sum of money—*e. g.* a bill of exchange, a policy of insurance (*Ex-parte Ibbetson*, 8 Ch. D. 519), an annuity (*see Bro. Abr. s. r.*; Hargrave's note to Co. Litt. 144b; Dacey Part. 67; 2 Bl. Com. 389. A right of presentation to a benefice when the church is vacant is called in the old books a chose in action (Cro. Eliz. 174, 788); but this use of the word is obsolete. It is not impossible that chose in action originally denoted a right of doing something, and had no necessary connection with legal proceedings. *See* CHATTEL, § 2), or a debt—or to recover pecuniary damages for the infliction of a wrong or the non-performance of a contract. (Wms. Pers. Prop. 4; Wats. Comp. Eq. 328.) Originally the term was only applied to a right of action in the strict sense, that is, the right to bring an action at law, but subsequently it was extended to the right of taking proceedings in equity; thus, the right to take proceedings to recover a legacy, or to recover a trust fund which has been misapplied by the trustee, is an equitable chose in action. (Wms. 6; *Pigott v. Stewart*, W. N. (1875) 69.) The distinction is still of importance in England, as the provisions of the Judicature Act, relating to assignment of choses in action, are limited to legal choses in action. *Infra*, § 3. Judicature Act, 1873, §§ 24, 25.

§ 3. **Assignment.**—Formerly choses in action were of two classes, namely, those which were assignable at law, and those which were only assignable in equity. Originally the only choses in action assignable at law were bills of exchange and similar negotiable instruments. Most other choses in action were only assignable by the device of allowing the assignee to sue in the name of the assignor. Debts and equitable choses in action were assignable in equity; but it was necessary for the assignee to give notice of the assignment to the debtor or trustee in order to preserve his priority. (*See* ASSIGNMENT, § 4.) In England, by the Judicature Act, 1873, Section 25, § 6, any absolute assignment of a legal chose in action, followed by express notice in writing to the debtor, trustee or other person from whom the chose in action is due, operates to pass

the legal right to the chose in action to the assignee from the date of the notice, subject to any equities affecting it. How a "legal" chose in action can be received or claimed from a "trustee" is not easy to understand. The word "legal" is probably a mistake. (As to the reason for the old prohibition against assigning choses in action, *see* 2 Spence Eq. 850; Mr. F. Pollock on "The Personal Character of Obligations in English Law," Law Mag. 1874.) Every assignment not falling within the words of this enactment remains subject to the former rules; therefore, an absolute assignment of an equitable chose in action, or an assignment of a legal or equitable chose in action by way of charge, is effectual only in equity. As, however, the High Court is bound to give relief in all cases in which it would, before the Judicature Act came into operation, have been given by a court of equity (§ 24), the distinction between the two kinds of choses in action is not of practical importance, except, perhaps, with reference to the division of the court in which relief should be sought. In the United States, if the debtor, after notice of the assignment, expressly promises to pay the debt to the assignee, the latter may then sue in his own name, unless the assignment of the chose in action in question is contrary to some statute or to public policy. Without notice to the debtor and such promise to pay, the assignee (even a *bona fide* assignee without notice) generally takes subject to all existing equities between the original parties, except in the case of the assignment of negotiable instruments. In many of the States, bonds, mortgages and other instruments may be assigned so as to pass the legal as well as the equitable title to the assignee, and by the adoption of such statutes and the several codes of practice, the old common law doctrine as to the assignment of choses in action has been materially departed from. *See* the statutes and codes of the several States.

§ 4. **Reversionary.**—Choses in action are of two classes, those which are immediately reducible into possession (*see* REDUCTION INTO POSSESSION), and those which are reversionary, such as a reversionary

interest in consols. The latter class were formerly of importance, from the fact that a reversionary chose in action belonging to a married woman could not be disposed of by her or the husband, or both together. Now, however, a married woman can dispose of any reversionary interest in personalty (with certain exceptions) by deed acknowledged. 20 and 21 Vict. c. 57; Wats. Comp. Eq. 334; Wms. Pers. Prop. 379.

§ 5. **Local and transitory.**—Choses are also called "local" when annexed to a particular place, and "transitory" when capable of being moved and carried from place to place.

§ 6. **Patents, copyrights, trade-marks and similar rights** are generally classed as incorporeal personal property. See **PERSONAL PROPERTY**.

CHOSE IN ACTION, (defined). 8 Port. (Ala.) 36, 40; 4 Ala. 350; 4 Den. (N. Y.) 80; 19 Wend. (N. Y.) 75; 2 Watts (Pa.) 61, 65.

— (distinguished from "cause of action"). 10 How. (N. Y.) Pr. 1; and see 1 Chit. Gen. Pr. 99.

— (what is included). 4 Den. (N. Y.) 80.

— (when a promissory note is). 3 Cush. (Mass.) 534.

— (in bankrupt law). 34 Wis. 259.

— (under statute, a judgment is). 1 Hill (N. Y.) 339.

— (assignment of). 6 Mass. 239.

— (assignment of a debt as). 4 Mass. 508.

CHOSEN, (in criminal code). 1 Neb. 365.

CHOSEN FREEHOLDERS.—A board of county officers, in New Jersey, having charge of the finances of the county, and composed of persons chosen by and representing the several towns or townships of the county. In some States similar officers are called "county commissioners" (*q. v.*), and in others the "board of supervisors" (*q. v.*)

CHRISTIAN NAME.—The baptismal name distinct from the surname. It has been said from the bench, that a christian name may consist of a single letter.—*Wharton*.

CHRISTIAN NAME, (a person can have but one). 1 Ld. Raym. 562.

CHRISTIANITATIS CURIA.—The court of christianity. An ecclesiastical court as opposed to a civil or lay tribunal.—*Cowell; Burrill*.

CHRISTIANITY.—The religion of christians, who derive their name from the

founder Christ, and were first so designated at Antioch, in Syria. It is part of the law of the land, and all offences against it are punished by fine and imprisonment at common law. See **BLASPHEMY**.

CHRISTIANITY, (what held to be). 8 Johns. (N. Y.) 290.

— (is a part of the common law of Pennsylvania). 11 Serg. & R. (Pa.) 394, 400.

— (in a trust for the advancement of). 3 Bro. Ch. Cas. 171.

CHRISTMAS DAY.—A festival of the christian church, observed on the 25th of December, in memory of the birth of Jesus Christ. As to its antiquity, the first traces we find of it are in the second century, about the time of the Emperor Commodus. The decretal epistles, indeed, carry it up a little higher, and say that Telesphorus, who lived in the reign of Antoninus Pius, ordered divine service to be celebrated, and an angelical hymn to be sung the night before the nativity. It is a *dies non juridicus*. When a bill of exchange becomes due on Christmas Day, it is payable (in most jurisdictions) on the day preceding. (Byles Bills (11 edit.) 206, 284.)—*Wharton*.

CHROMATE OF IRON, (is included in a deed of "all mineral or magnesia of any kind"). 5 Watts (Pa.) 34.

CHRYSOLOGY.—That branch of political economy relating to the production of wealth.

CHUCK-A-LUCK, (in indictment for gambling). 3 J. J. Marsh. (Ky.) 133.

CHURCH.—

§ 1. **In American law.**—(1) A building, edifice or place set apart for the assembling of people to worship God. (2) A society of persons who profess christianity, and belong to the same denomination of christians. (3) The collective body of christians, or of those who acknowledge Christ as the Saviour of mankind.—*Webster*.

§ 2. **In English law**, a church is a building consecrated for divine service according to the rites of the Church of England, and having an incumbent for the cure of souls within the parish in which the church is situated. Churches are divisible into—(1) what are commonly called parish churches, or churches belonging to original parishes; and (2) churches belonging to new parishes, formed by the separation or subdivision of original parishes under the provisions of the early Church Building Acts, (Stat. 58 Geo. IV. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72,) and

the acts relating to the ecclesiastical commissioners. Phillim. Ecc. L. 1755 *et seq.*, 2167. See PARISH; also CHANCEL; CHAPEL.

CHURCH. (defined). 16 Conn. 291, 300; 3 Me. 243, 247; 16 Mass. 495; 10 Pick. (Mass.) 171, 172, 193; 16 Gray (Mass.) 330; 48 N. H. 393; 3 Harr. (N. J.) 257; 9 Barb. (N. Y.) 64, 95; 3 Paige (N. Y.) 301.

——— (in a statute). 9 Barb. (N. Y.) 64; L. R. 2 A. & E. 386.

——— (in a will). 2 Conn. 287.

——— (sale of a). 9 Wheat. (U. S.) 445.

CHURCH BUILDING ACTS.—

English statutes, passed since 1818, to extend the accommodation afforded by the Church of England. (3 Steph. Com. 152-164.)—*Burrill*.

CHURCH DISCIPLINE ACT.—The

Stat. 3 and 4 Vict. c. 86, containing regulations for trying clerks in holy orders charged with offences against ecclesiastical law, and for enforcing sentences pronounced in such cases. Phillim. Ecc. L. 1314; Reg. v. Bishop of Oxford, 4 Q. B. D. 245, 525. See PUBLIC WORSHIP REGULATION ACT.

CHURCH MEMBER, (defined). 7 Halst. (N. J.) 206.

——— (rights of). 3 Paige (N. Y.) 301; 4 Halst. (N. J.) 411.

CHURCH OF ENGLAND, (defined). 9 Cranch (U. S.) 325.

CHURCH PARISH, (in a will). 1 Atk. 435, 437.

CHURCH-RATE.—A rate levied by the church wardens of a parish for the repair of the church. Formerly such rates appear to have been recoverable, in England, in the ecclesiastical courts; but now the payment of them is voluntary, except where they are levied under local acts of parliament, either (1) in lieu of tithes, or for other good consideration; or (2) to pay off money borrowed on the security of church-rates. Stat. 31 and 32 Vict. c. 109; Phillim. Ecc. L. 1816; 2 Steph. Com. 698.

CHURCH RECORD, (defined). 11 Pick. (Mass.) 492.

CHURCH REEVE.—A church warden (*q. v.*)

CHURCH-SCOT.—Customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.—*Wharton*.

CHURCH WARDENS.—Parochial officers for several purposes, who are to inspect the morals and behavior of the parishioners, as well as to take care of the goods and repairs of the church. (Phillim. Ecc. L. 1837 *et seq.*) They are a corporation for the purpose of the custody of the ornaments of the church (*Id.* 1839) and levy the church-rate (*q. v.*) 1 Bl. Com. 394.

CHURL.—*SAXON: ceort; GERMAN: corl.*

A tenant at will, of free condition, who held lands of the Thanes, on payment of rents and

services; of two sorts: one who hired the lord's tenementary estate, like our farmers; the other that tilled and manured the demesnes (yielding work and not rent), and were called his "sockmen," or "ploughmen."—*Spel. Gloss.* See CHURL.

CHYMIN.—See CHIMIN.

CINQUE PORTS.—

§ 1. The five harbors of Hastings, Romney, Hythe, Dover and Sandwich. On these ports extensive privileges were conferred by the early sovereigns, particularly by William the Conqueror and King John; and two other towns, Winchelsea and Rye, were subsequently added to their number. From their position, lying more immediately exposed to attacks from the French coast, they were supposed to be among the most important places in the kingdom, and were placed under the especial custody of a lord warden. . . . Until recently the lord warden of the Cinque Ports and the constable of Dover Castle had a local jurisdiction in relation to civil suits and proceedings; but this was taken away by 18 and 19 Vict. c. 48 (amended by 20 and 21 Vict. c. 1, and 32 and 33 Vict. c. 53).

§ 2. The commissioners within the Cinque Ports are persons nominated by the lord warden to determine certain questions as to salvage and claims for services to ships by pilots or others within the jurisdiction of the Cinque Ports.

§ 3. The Admiralty Court of the Cinque Ports seems to have as extensive a jurisdiction in admiralty matters within its local limits as the High Court of Justice. It also hears appeals from the commissioners (*supra* § 2) and the county courts within the Cinque Ports.

CIPPI.—An old English law term for the stocks, an instrument in which the wrists or ankles of petty offenders were confined.

CIRCADA.—A tribute anciently paid to the bishop or archbishop for visiting churches.—*Du Fresne*.

CIRCUIT.—*LATIN: circuitus, from circum, around, and ire, to go.*

§ 1. A territorial division of the country appointed to be visited at stated times by a judge for the trial of causes at *Nisi Prius*, and the administration of justice. This practice is still in force in a few of the States, and in those even in which permanently established courts for *Nisi Prius* trials have been erected, the word "circuit" is frequently used to designate the court, or term of court, at which such trials are held.

§ 2. In England, circuits are divisions of the country for judicial business. For the purpose of holding assizes (*q. v.*), the country is divided into seven circuits, namely, the Northern, North-eastern, Midland, South-eastern, Oxford, Western, and North and South Wales, the last being divided into two divisions. The county of Surrey forms a kind of circuit by itself.

§ 3. County court circuits were created by Stat. 8 and 9 Vict. c. 95. As its name implies, a county court circuit is a district having several courts in which the judge of the district holds sittings in rotation.

CIRCUIT COURTS.—

§ 1. *Of the United States.*—Prior to the act of congress of 1869 (U. S. Rev. Stat. § 607) the several circuit courts were held by a Supreme Court justice, (during an intermission in the sitting of the latter court,) in his own particular circuit, and with him sat the district court judge of the district in which the circuit court was held. Since the act above mentioned, circuit judges have been appointed for each judicial circuit, with the same powers as the Supreme Court justice holding a circuit court. The district judge still often sits with the circuit judge, and where they differ in opinion, either party may have the question upon which such difference arises, certified to the Supreme Court for its opinion; if this is not done, the opinion of the circuit judge will override that of the district judge, except on the question of imprisonment or punishment for crime. Congress has power to enlarge or diminish the jurisdiction of these courts at will, for, unlike the Supreme Court, they were not created by the constitution, but by congress, under the powers conferred upon it by that instrument. As to the jurisdiction of these courts, see U. S. Rev. Stat. §§ 629, 630; also 18 Stat. at L. 470.

§ 2. *Of the States.*—There are in all of the States courts of original jurisdiction, in which civil and criminal cases are tried by judge and jury, and which, in many of them, are called "circuit courts." Their jurisdiction is generally original only, and their decisions are reviewable in a higher court of the State.

Circuitus est evitandus; et boni iudicis est lites dirimere, ne lis ex lite oriatur (5 Co. 31): Circuitry is to be avoided; and it is the duty of a good judge to determine litigations, lest one law-suit arise out of another. On this maxim depends the law of set-off.

CIRCUITY OF ACTION is where two or more proceedings are taken to effect the same result, as might be effected by one. Thus, where A. sues B. for a debt, and B. brings another action against A. on a contract, instead of B. setting off his

claim against A. in the first action; so, where A. sues B. on a liability against which B. has a guarantee or indemnity by C., and B. brings an action against C. on his guarantee or indemnity, instead of C. defending the original action against B. Formerly circuity of action was the rule, and not the exception, but now the provisions of recent statutes, both in England and America, may be said to have abolished circuity of action as far as is practically possible. See DISCHARGE.

CIRCULAR NOTES.—Similar instruments to "letters of credit." They are drawn by resident bankers upon their foreign correspondents, in favor of persons traveling abroad. The correspondents must be satisfied of the identity of the applicant, before payment; and the requisite proof of such identity is usually furnished, upon the applicant's producing a letter with his signature, by a comparison of the signatures.—*Brown.* See LETTER OF CREDIT.

CIRCULATING MEDIUM.—This term is more comprehensive than "money," as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

CIRCUMDUCTION.—In Scotch practice, a judicial declaration that the time allowed to either party for leading proof has elapsed, and precluding further evidence.

CIRCUMFERENCE, (how defined). 5 Johns. (N. Y.) 454.

—— (boundary of land under patents, by). 3 Cai. (N. Y.) 303.

CIRCUMSPECTE AGATIS.—The title usually given to the Stat. 13 Edw. I. defining the respective jurisdictions of the temporal and ecclesiastical courts in certain matters.

CIRCUMSTANCES.—The condition of things surrounding or accompanying an act, event or transaction; relative facts, as distinguished from a principal fact, of which they may be corroborative or the reverse.

CIRCUMSTANCES, (to raise presumption of grant). 3 Halst. (N. J.) 151.

—— (insolvent, defined). 1 Mau. & Sel. 338, 350, 354.

CIRCUMSTANTIAL EVIDENCE.—Presumptive proof, when the fact itself is not proved by direct testimony, but is to be inferred from circumstances, which

either necessarily or usually attend such facts. It is obvious that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed unless the fact which is inferred from them had also existed: and that a presumption can only be relied on until the contrary is actually proved. Circumstantial evidence has, in some instances, undoubtedly been found to produce a much stronger assurance of a prisoner's guilt than could have been produced by more direct and positive testimony. As a general principle, however, it is true that positive evidence of a fact from credible eye-witnesses is the most satisfactory that can be produced; and the universal feeling of mankind leans to this species of evidence in preference to that which is merely circumstantial. If positive evidence of a fact can be produced, circumstantial evidence ought not to be trusted. Chief Baron Gilbert, therefore, considered it a higher species of proof. He says, "When the fact itself cannot be proved, that which comes nearest to the proof of the fact is the proof of the circumstances which necessarily or usually attend such facts, and which are called presumptions and not proofs, for they stand instead of the proofs of the fact till the contrary be proved." (1 Phil. Ev. ch. 7, § 2; see Wills Cir. Ev.)—*Wharton*.

** In ordinary action.*—In an action in the High Court, where a defendant claims to be entitled to relief (e. g. contribution or indemnity) against any person not a party to the action, he may, by leave, issue a notice to that effect, stating the nature of the claim, and requiring him to enter an appearance in the action; the notice is filed, and a sealed copy of it is served on the person, together with a copy of the statement of claim in the action. (Rules of Court, xvi. 18.) This is called "citation," or "notice by defendant to third party." (Swansea, &c., Co. v. Duncan, 1 Q. B. D. 644.) If the third party fails to appear, he cannot dispute the validity of any judgment obtained against the defendant citing him. (Rules of Court, xvi. 20. See *Yorkshire Waggon Co. v. Newport Coal Co.* 5 Q. B. D. 268.) If he appears, it is the duty of the party citing him to apply to the court for directions as to the mode of having the question in the action determined.

In divorce practice, a citation corresponds in some respects with a writ of summons in ordinary actions; it is a document directed to the respondent or co-respondent, and commanding him to appear within a certain time after service. It cannot be extracted or issued until the

CIRCUMSTANTIBUS, TALES DE.—See **TALES**.

CIRCUMVENTION.—In Scotch law, fraud or deceit.—*Bell Dict.*

CIRLISCUS.—A ceorl (*q. v.*)

CISTA.—A box or chest for the deposit of charters, deeds and things of value.

CITACION.—A summons issued by a Spanish court, ordering the defendant in an action to appear and defend, within a time specified therein.

CITATIO AD REASSUMENDAM CAUSAM.—A citation which issued when a party died pending a suit, against his heir, to revive the cause.

Citatio est de jure naturali: A summons is by natural right.

CITATION.—**LATIN:** *citatio*, from *citare*, to cite.

§ 1. **In American practice.**—A process used in surrogates' and other probate courts, to secure the attendance of parties and persons interested in the probate of wills, in proceedings to obtain letters of administration, &c. It is also used in a somewhat similar sense in proceedings to remove causes into the United States Supreme Court on writ of error.

§ 2. **In English practice.**—The operation of calling upon a person who is not a party to an action or proceeding, to appear before the court in that action or proceeding.*

petition has been filed, and after being served it is filed in the registry. Browne Div. 207, 217.

In probate actions, citation is employed in order to give notice of the proceedings to persons whose interests are or may be affected by them, so as to give them an opportunity of appearing and taking part in the proceedings if they wish to do so. This is called "citation to see proceedings." (Probate Rules, 1862, C. B. 16; Forms No. 4; *Kennaway v. K.*, 1 P. D. 148.) The person issuing a citation is called the "party citant," and the person to whom it is addressed, the "citee." Formerly citation was also a mode of commencing a suit in the probate court. Such citations were of various kinds, the principal being citations by an executor to the next of kin, &c., to see a will proved in solemn form; by a legatee to an executor to prove the will, or to bring in a probate to be revoked, &c. (Browne 169.) Under the new practice such suits or actions are now commenced by writ of summons. Rules of December, 1875.

In admiralty.—Under the old admiralty practice, where a ship, cargo, &c., was already under arrest in a cause, and a second cause was instituted against it, the plaintiff in the latter issued, instead of a warrant, a citation *in rem*, com-

§ 3. In Scotch practice.—The calling of a party to an action, by an officer of the court, under a proper warrant.—*Bell Dict.*

§ 4. Of authorities.—The quoting, or reference to constitutional provisions, statutes, decisions of courts, and opinions of text-writers, for the purpose of sustaining a rule of law contended for. See TABLE OF ABBREVIATIONS, *ante* p. V.

Citationes non concedantur priusquam exprimitur supra qua re fieri debet citatio (12 Co. 44): Summonses should not be granted before that it is explained for what cause a summons ought to issue.

CITIZEN.—

§ 1. In American law.—One who, under the constitution and laws of the United States, has a right to vote for public officers, and who is qualified to fill offices in the gift of the people. (3 Story Const. (1 ediv.) 1687.) But the right to vote is not the sole test of citizenship, for many citizens are not permitted to vote; thus women, and youths under twenty-one, are none the less citizens because they cannot vote, and the latter right is also constantly lost, temporarily, by change of domicile or residence. All persons born within the United States are not for that reason citizens; thus, children of Indians, born to parents living within the tribal relation, are not citizens, and cannot become such even by naturalization; and prior to the fourteenth amendment to the United States constitution, negroes were debarred the rights of citizenship. The decisions on the right of natives of China to acquire citizenship by naturalization are conflicting, but the weight of authority seems to incline to the negative side of the question. The fourteenth amendment would seem, however, to confer citizenship on a child of Chinese parents born here. A person may be a citizen of a State without being a citizen of the United States (19 How. (U. S.) 393), and, conversely, he may be a citizen of the United States and not of any particular State, *e. g.* residents of the Terri-

tories or the District of Columbia. And the same person may often be a citizen for some purposes and not for others. Native born citizens are eligible to any office, but naturalized citizens cannot fill the offices of president or vice-president of the United States. Children of citizens born while their parents are traveling abroad, are citizens, and so, also, an alien woman becomes a citizen on her marriage to a citizen. As to the acquirement of citizenship by naturalization, *see* that title. Consult, also, ALIENS; ALLEGIANCE; EXPATRIATION.

§ 2. In English law, a citizen is a freeman, or one who has resided and kept a family in the city (1 Rolle 138, 149). The word "subject," in England, expresses nearly the same idea as "citizen" in America, the latter word being confined more nearly to its original meaning, *i. e.* the inhabitant of a city.

CITIZENS, (defined). 2 Otto (U. S.) 542; 3 Day (Conn.) 281; 39 Ga. 232, 260; 15 Ind. 449; 1 Litt. (Ky.) 333.

—— (who are). 8 T. R. 31, 45.

—— (absentee from State not disfranchised). 4 Dall. 360.

—— (Africans whose relatives sold as slaves, are not). 19 How. (U. S.) 393.

—— (synonymous with "people of the United States"). 19 How. (U. S.) 404; 7 Mass. 525.

—— (when synonymous with "residents"). 11 Ohio 24, 27.

—— (not synonymous with "inhabitants"). 4 Harr. (Del.) 383.

—— ("subjects" construed as). 2 Wheat. (U. S.) 227.

—— (Americans residing abroad). 4 Wend. (N. Y.) 603.

—— (changing domicile). 2 Johns. (N. Y.) Cas. 407.

—— (children born abroad). 12 N. H. 362; 31 Barb. (N. Y.) 486; 21 Wend. (N. Y.) 391;

1 Nott. & M. (S. C.) 292; 10 Rich. (S. C.) Eq. 38.

—— (children of naturalized persons are). 6 Cranch (U. S.) 176.

—— (when corporations are). 40 Ind. 444; 2 Litt. (Ky.) 256; 3 Zab. (N. J.) 429; 6 Vr. (N. J.) 232.

—— (when corporations are not). 8 Wall. (U. S.) 163; 1 Woods (U. S.) 85; 48 Ill. 172;

20 Barb. (N. Y.) 68; 2 Phil. (Pa.) 23.

—— (Indians are not). 1 Dill. (U. S.) 344; 20 Johns. (N. Y.) 693.

manding the marshal to cite all persons interested to enter an appearance. It was served in the same way as a warrant. (Wms. & B. Adm. 196.) Under the new practice a writ of summons *in rem* is issued. (Rules of Court, ii. 1, 7.) In an admiralty action *in personam*, the defendant was cited to appear by a citation *in personam*. (Wms. & B. Adm. 241.) This is now done by a writ of

summons in the ordinary form. Rules of Court, ii. 3.

In the ecclesiastical courts, generally, the issue of a citation is the usual mode of commencing a suit. It is a judicial act by which the defendant is commanded to appear in the suit. 1 Phillim. Ecc. L. 1253, 1280; Rog. Ecc. L. 743.

CITIZENS, (negroes are). 1 Abb. (U. S.) 28, 40; 2 Bond (U. S.) 389; 26 Ind. 299; 10 Bush (Ky.) 681.

— (of a State). 1 Cranch (U. S.) 343; 2 Id. 64, 445; 6 Pet. (U. S.) 761; 3 Wash. (U. S.) 546; 16 Mass. 234; 2 Pick. (Mass.) 394; 15 Serg. & R. (Pa.) 84, 90; 2 Munf. (Va.) 397.

— (of one State, when of another State). 1 Paige (N. Y.) 184.

— (of the United States). 2 Mass. 226; 16 Id. 235.

— (under civil rights bill). 1 Abb. (U. S.) 28; 1 Chase, Dec., (U. S.) 157; 1 Dill. (U. S.) 344; 19 How. (U. S.) 393; 2 Otto (U. S.) 542; 8 Wall. (U. S.) 168; 2 Wheat. (U. S.) 227.

— (under the decisions of the commissioners of Spain). 5 Rawle (Pa.) 19.

— (who is not a French citizen). 1 Yeates (Pa.) 549.

— (in act relative to removal of causes). 3 Abb. (N. Y.) Pr. N. S. 453; 5 Mas. (U. S.) 70; 6 Pet. (U. S.) 761; 51 Ill. 430; 53 Barb. (N. Y.) 472.

— (in election law). 2 Scam. (Ill.) 377.

— (in exemption act). 14 Tex. 594.

— (in homestead law). 24 Ark. 155.

— (in State constitution). 15 Ind. 449, 451.

CITIZENS, TWO REPUTABLE, (in a statute, defined). 1 Serg. & R. (Pa.) 382.

CITIZENSHIP.—The status of being a citizen (*q. v.*)

CITIZENSHIP, (in Union and State, distinguished). 2 Otto (U. S.) 542.

— (does not include right to vote). 43 Cal. 43.

CITY.—(1) In America, an incorporated town of the larger class, governed by a mayor and common council, or board of aldermen. (2) In England, a borough "which hath or hath had a bishop." Co. Litt. 109b, and *n.* (2).

CITY, (defined). 1 Bl. Com. 114; 4 Cush. (Mass.) 366.

— (charter of). 3 Wheel. Am. C. L. 527.

— (in a statute). 84 Ill. 502; *Id.* 157.

— (in tax act). 77 Ill. 610.

— (in Spanish law). 5 La. Ann. 724.

— (when includes incorporated town). 77 Ill. 610, 615.

— (the court will take notice that London is). 1 Stra. 309, 313.

CITY ENGINEER, (in a contract). 106 Mass. 378, 388.

CITIES, TOWNS, CORPORATE BOROUGH AND PLACES, (in a statute, do not include unincorporated places). Wilberf. Stat. L. 182.

CITY OF LONDON COURT.—A court having a local jurisdiction within the city of London. It is to all intents and purposes a county court, having the same jurisdiction and procedure. (Stat. 30 and 31 Vict. c. 142, § 37.) It has exclusive jurisdiction in admiralty mat-

ters within the city. Rosc. Adm. 75; Stat. 31 and 32 Vict. c. 71. See MAYOR'S COURT OF LONDON.

CIVIL.—(1) Pertaining to a citizen, as distinguished from that which pertains to the government, the military, the clergy, or to those who do not live in cities. This seems to be the original meaning of the word; in more modern usage, especially in the United States, its meaning is little more than this: that which is not of a criminal nature; that with which the military have no concern.

CIVIL ACTION.—An action instituted to enforce a private or civil right, or to redress a private wrong, as distinguished from proceedings to punish infringements of public rights, and crimes, which are called "criminal actions," or "prosecutions," the latter being the better word.

CIVIL ACTION, (defined). 9 Pet. (U. S.) 632, 656; 43 Vt. 297.

— (what included). 1 Dill. (U. S.) 181, 1 Woolw. (U. S.) 123; 23 Ohio St. 415; 2 Serg. & R. (Pa.) 197.

— (what is not). 8 Serg. & R. (Pa.) 151; 43 Vt. 297.

— (*habeas corpus* is not). 41 Ind. 92.

— (in a statute). 15 Cal. 220; 19 Id. 481; 21 Id. 129; 12 Cush. (Mass.) 259; 1 Allen (Mass.) 212; 97 Mass. 530; 104 Id. 373; 23 Ohio St. 415.

CIVIL ACTION OR PROCEEDING, (in a statute) 14 Gray (Mass.) 375; 15 Id. 48.

CIVIL BILL COURT.—A tribunal in Ireland with a jurisdiction analogous to that of the county courts in England. The judge of it is also chairman of quarter sessions (where the jurisdiction is more extensive than in England), and performs the duty of revising barrister. The procedure of the civil bill courts is regulated by the 27 and 28 Vict. c. 99; 28 and 29 Vict. c. 1, and 37 and 38 Vict. c. 66.—*Wharton*.

CIVIL CASE, (a *mandamus* is not, within the statute) 6 Binn. (Pa.) 5.

CIVIL CASES, (defined). T. U. P. Charl. (Ga.) 177, 181; 9 Ind. 558; 26 Id. 53; 15 La. 192.

— (in guaranty of jury trial, in State constitution). 9 Ind. 558.

— (in Code of Procedure, synonymous with "actions"). 11 How. (N. Y.) Pr. 83.

— (in State constitution). 30 Cal. 98.

— (in statute conferring jurisdiction). 20 Ind. 101; 24 Id. 468.

CIVIL CASES NOW PENDING, (in a statute). 14 Bush (Ky.) 97.

CIVIL CAUSES, (does not include bastardy cases). 35 Ill. 467; 38 Id. 62; 6 Blackf. (Ind.) 1; 21 Vt. 23.

— (does not include equity cases). 3 Ga. 575.

CIVIL COMMOTION.—An insurrection of the people for general purposes, though it may not amount to rebellion, where there is an usurped power. 2 Marsh. Ins. 793.

CIVIL CORPORATIONS.—An old English term for all lay corporations which are not eleemosynary or charitable. See **ELEEMOSYNARY CORPORATIONS**.

CIVIL COURT, (defined). South. (N. J.) 312.

CIVIL DEATH.—A man is said to be civilly dead when he has been attainted of treason or felony, and, in former times, when he abjured the realm or went into a monastery. The 33 and 34 Vict. c. 23, provides that after the passing of that act no confession, verdict, inquest, conviction or judgment, of or for any treason or felony, or *felo de se*, shall cause any attainder or corruption of blood, or any forfeiture or escheat. In at least one of the States of the Union, civil death still exists in cases of sentences to imprisonment for life.

CIVIL INJURY.—Injuries to person or property which may be redressed by means of a civil action.

CIVIL LAW.—

§ 1. That rule of action which every particular nation, commonwealth, or city has established peculiarly for itself, more properly distinguished by the name of "municipal law."

§ 2. **Roman law.**—The term, "civil law," is now chiefly applied to that which the old Romans compiled from the laws of nature and nations. The "Roman law," and the "civil law," are convertible phrases, meaning the same system of jurisprudence; it is now frequently denominated, the "Roman civil law." The collections of Roman civil law, before its reformation in the sixth century of the christian era, by the eastern emperor, Justinian, were the following: (1) *Leges Regiæ*; (2) *Leges Decemvirales*; (3) *Jus Civile Flavianum*. The imperial, or civil law, as consolidated by Justinian, consists of four parts: (1) The Institutions; (2) The Digest, or Pandects; (3) The Code; and (4) The Novels, or new Constitutions.

CIVIL LAW, (when means Roman law). 5 La. 493.

CIVIL LIBERTY.—The liberty enjoyed by a citizen or subject of a civilized nation, *i. e.* the natural liberty of man, restrained by law; so far and no farther, as is necessary to the protection

and well being of the community. The power of doing whatever the laws permit. 1 Bl. Com. 6.

CIVIL LIST.—The revenue settled on the crown, and so called from having been originally intended to defray the ordinary expenses of the government, as opposed to the military or extraordinary expenses. Afterwards, the crown surrendered its hereditary revenues (the profits of crown lands, &c.), and the civil list is now fixed at £385,000 per annum, out of which are defrayed the personal expenses of the crown and royal household, special and secret services. Pensions to the amount of £1200 may also be granted by the crown to persons deserving of the public bounty. (H. Cox Inst. 606; 2 Steph. Com. 516; Stat. 1 and 2 Vict. c. 2.) The other public expenses, formerly charged on the civil list, are now charged on the Consolidated Fund (*q. v.*)

CIVIL NATURE, (suits of, what are). 1 Root (Conn.) 200; 1 Green (N. J.) 5; 3 Dall. (U. S.) 475.

CIVIL OBLIGATION.—An obligation binding in law, and enforceable in a court of justice. Poth. Obl. 173, 191.

CIVIL OFFICER.—Every officer who holds his appointment under the national government, whatever his grade, or the nature of his powers or duties, except officers of the army and navy. Rawle Const. 213; Story Const. § 791-793.

CIVIL OFFICERS, (in territorial organic act). Burn. (Wis.) 22; 1 Pinn. (Wis.) 182.

CIVIL PLEAS AND ACTIONS, (what are). 5 Rawle (Pa.) 124, 130.

CIVIL PROCEEDING, (includes bastardy case). 13 Pick. (Mass.) 284.

CIVIL REMEDY.—A remedy open to a private person, as opposed to a criminal prosecution.

CIVIL RESPONSIBILITY.—Amenability to prosecution in a civil action, as opposed to criminal responsibility, or liability to be proceeded against in a criminal tribunal.

CIVIL RIGHTS.—The rights attached to citizenship; rights which may be enforced by a civil action.

CIVIL SERVICE.—This term properly includes all functions under the government, except military functions. In general it is confined to functions in the great administrative departments of State.—*Wharton*.

CIVIL SIDE.—The legal business of the assizes is arranged according to the natural division of such cases as are merely civil, in which the disputes of subjects (citizens) as to property are decided, and those of a criminal nature, when men are charged with offences against the welfare of society at large. In the county hall, or court in which the trials take place, it is very usual for one side or portion of the building to be appropriated to the hearing of cases of the former character, and the other side or portion to the hearing of those of the latter character. And hence the phrase has become common that the judge is either sitting "on the civil side" or "on the criminal side," meaning thereby that he is either presiding at *Nisi Prius* or trying a prisoner, as the case may be. It is now customary for two judges to attend circuit together, and then one of them sits on the "civil" the other on the "criminal side."—*Brown*.

CIVIL SUIT, (defined). 18 N. Y. 128.

— (what is). 2 Conn. 357; 5 Rawle (Pa.) 119.

— (what is not). 1 Root (Conn.) 436.

— (in a statute). 4 Serg. & R. (Pa.) 76.

CIVIL WAR.—An internecine war in which the opposing forces both belong to the same country or nation, *e. g.* the revolutionary war prior to the declaration of independence, or the late rebellion prior to the president's proclamation of August 16th, 1861.

CIVIL WAR, (the late rebellion was). 2 Blackf. (U. S.) 635; 35 Ind. 125.

— (the late rebellion was not). 37 Ga. 482, 484.

CIVILIAN.—One who professes the knowledge of the civil law.

CIVILITER.—Civily. In a man's civil character or position, or by civil, in opposition to criminal, process; as "sheriffs who execute processes at their peril are answerable *civiliter* for what they do upon it," or "a man may, without his own fault, be possessed of a horse which has been stolen, but nevertheless he is answerable *civiliter* to the true owner of it." (*Per* Rooke, J., 1 Bos. & P. 409.)—*Brown*.

CIVILITER MORTUUS.—Civily dead. See CIVIL DEATH.

CIVILITER MORTUUS, (under act of attainder, who considered). 2 Johns. (N. Y.) 248; 1 Bl. Com. 133.

— (persons sentenced to imprisonment for life considered). 4 Johns. (N. Y.) Ch. 228, 247; 6 Id. 118; 2 Johns. (N. Y.) Cas. 408.

— (an habitual drunkard is not). 4 Watts (Pa.) 459.

Civitas et urbs in hoc differunt, quod incolæ dicuntur civitas, urbs vero complectitur ædificia (Co. Litt. 409): A city and a town differ in this, that the inhabitants are called the city, but town includes the buildings.

CLAIM.—

§ 1. **Generally.**—A challenge by any man of the property or ownership of a thing, not at the time in his possession, but (as he contends) wrongfully withheld from him.—*Termes de la Ley*.

§ 2. **Against assets.**—In administration proceedings, windings-up of corporations, and similar proceedings, persons who consider themselves to have rights against the assets in course of administration, have to send in claims in the shape of formal notices to the executor, liquidator, &c.

§ 3. **In bankruptcy**, a creditor of the bankrupt is not allowed to receive a dividend from the estate until he has proved his debt (see PROOF); but where a creditor, though he has a just demand against the estate, is not able to perfect his proof before a dividend is declared, he is allowed to enter a claim, and the dividends in respect of it will be reserved for a reasonable time until he can prove his debt. Robs. Bankr. 327.

§ 4. **To wild land.**—The possession of a settler upon wild lands belonging to the United States government; also the lands themselves so possessed.

CLAIM, (defined). 16 Pet. (U. S.) 538, 575, 576, 604, 615; 4 Sawy. (U. S.) 217; 10 How. (N. Y.) Pr. 67-72; 2 N. Y. 245, 254; 14 Id. 32; 43 Id. 399; 6 Daly (N. Y.) 434, 446; 4 Sandf. (N. Y.) Ch. 381; 43 Wis. 638; 5 Hayw. (Tenn.) 14, 15; Plowd. 359.

— (synonymous with "legal demand"). 9 Cal. 616, 624.

— (when equivalent to "cause of action"). 83 N. Y. 516.

— (not limited to money but extends to lands, under act of congress). 4 Blatchf. (U. S.) 385; 4 Sawy. (U. S.) 217.

— (in a statute). 5 Hayw. (Tenn.) 74.

— (in an award). 5 Barn. & Ald. 848.

— (in revenue act). 31 Cal. 146.

CLAIM ARISING UPON CONTRACT, (in a statute). 32 Mich. 60.

CLAIM CONTINUAL.—See CONTINUAL CLAIM.

CLAIM OF LIBERTY.—A suit or petition to the queen, in the court of exchequer, to have liberties and franchises confirmed there by the attorney-general.—*Wharton*.

CLAIMANT.—(1) A person who makes a claim in an administrative proceeding. (*See* CLAIM, § 2.) (2) The plaintiff in the old action of ejectment was called "the claimant." (3) A person who is admitted to defend against a libel *in rem* in a court of admiralty.

CLAIMANT, (who is, within a statute). 46 Ga. 295.

CLAIMING WITHIN A YEAR, (in a will). 19 Ves. 426.

CLAIMS, (covenant against). 2 Johns. (N. Y.) 395; 6 Wend. (N. Y.) 404; 6 Hill (N. Y.) 324. — (in a statute). 21 Cal. 24; 27 *Id.* 350; 46 Ga. 223.

— (in statute of arbitration). 14 N. Y. 32.

— (under partnership transactions). 17 Wend. (N. Y.) 410.

CLAIMS AND DEMANDS, (in a covenant). 1 Barn. & C. 29, 34.

CLAIMS AND EFFECTS, (construed). 37 Tex. 19.

CLAIMS OR DEMANDS, (in a will). 1 Whart. (Pa.) 362, 375.

Clam delinquentes magis puniuntur quam palam (8 Co. 127): Those sinning secretly are punished more severely than those sinning openly.

Clam, vi, aut precario: By force, stealth, or importunity.

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM.—An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service, and could not appear in person.—*Reg. Orig.* 19.

CLANDESTINE MORTGAGES.—The Stat. 4 and 5 Will. & Mary c. 16, (A. D. 1692,) enacted that if any person, having once mortgaged his lands for a valuable consideration, shall again mortgage the same lands, or any part thereof, to any person, the former mortgage being in force, and shall not discover in writing to the second mortgagee the first mortgage, such mortgagor so again mortgaging his lands shall have no relief or equity of redemption against the second mortgagee. But this act is not to bar of her dower any widow who does not legally join her husband in such second mortgage.—*Wharton.*

CLARE CONSTAT.—It clearly appears. A precept, in the Scotch law, by which seisin was given to the heir of a vassal, of the lands of his ancestor. It took its name from its initial words.—*Burrill.*

CLARENDON, CONSTITUTIONS OF.—In the reign of Henry II., (A. D. 1164,) Blackstone states that there are four things which peculiarly merit the attention of the legal antiquarian, one of which is the "constitutions of the parliament at Clarendon," whereby the king checked the power of the pope and his clergy,

and narrowed the exemptions they claimed from the secular jurisdiction. These constitutions enacted in substance that the king's courts should try all contested rights of advowson and presentation; ecclesiastics should obey the king's summons; appeals from the archbishop should be to the king alone; all disputes regarding lands between ecclesiastics and laymen should be tried by the king's justices; all pleas of debt, notwithstanding the same may be affected with a trust, should be determined in the king's courts, with other provisions of a similar character.—*Brown.*

CLASS.—A number of persons or things ranked together, because possessed of certain qualities in common. Gifts by will to classes of persons, *e. g.* to the children, nephews, brothers, &c., of the testator or of another person, frequently give rise to the question, at what time the members of the class who are to share in the gift are to be ascertained, and at what time their interests are to be treated as vested. Rules of construction have been adopted by the courts, but they are too complicated to be stated here. *See* Wats. Comp. Eq. 1281 *et seq.* *See* INQUIRY.

CLASSIARIUS.—A seaman or soldier serving at sea.

CLASSIFICATION.—In the practice of the English Chancery Division, where there are several parties to an administration action, including those who have been served with notice of the decree or judgment (*see* NOTICE OF DECREE), and it appears to the judge (or chief clerk) that any of them form a class having the same interest (*e. g.* residuary legatees), he may require them to be represented by one solicitor, in order to prevent the expense of each of them attending by separate solicitors. This is termed "classifying the interests of the parties attending," or, shortly, "classifying" or "classification." In practice the term is also applied to the directions given by the chief clerk as to which of the parties are to attend on each of the accounts and inquiries directed by the judgment. Consol. Orders xxx. 20; Dan. Ch. Pr. 1088; *see, also*, Rules of Court, xvi. 12b (April, 1880). Special regulations on this head are in force in the Master of the Roll's Chambers.

CLAUSE.—A portion of a sentence in a written instrument; a part of a deed, will, statute or treaty.

CLAUSE, (in a statute). L. R. 4 App. Cas. 70.

CLAUSE IRRITANT.—By this clause, in a deed or settlement, the acts or deeds of a tenant for life or other proprietor, contrary to the conditions of his right, become null and void; and by the "resolutive" clause such right becomes resolved and extinguished.—*Bill Dict.*

CLAUSE ROLLS.—Contain all such matters of record as were committed to close writs; these rolls are preserved in the tower. See CLOSE ROLLS.

CLAUSULA.—A clause (*q. v.*) used chiefly in such Latin sentences and maxims as the following—

Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæ speciatim dicta fuerunt: A general clause of reservation does not comprehend those things which may not be of the same kind with those which have been especially expressed. Loffi 419.

Clausula generalis non refertur ad expressa: A general clause does not refer to things expressed. 8 Co. 154.

Clausula quæ abrogationem excludit ab initio non valet: A declaration which excludes rescission is inoperative from the first.

Clausula vel dispositio inutilis per præsuppositionem remotam vel causam ex post facto non fulcitur: An unnecessary clause or disposition is not rendered valid by a remote presumption or a cause arising after the event. Bac. Max. Reg. 21.

Clausulæ inconsuetæ semper inducunt suspicionem: Unusual clauses always excite suspicion. In Twyne's Case (1 Sm. Lead. Cas. 1), a deed containing a clause that the gift was made "honestly, truly, and *bona fide*," was held fraudulent and void, even although made for valuable consideration.

CLAUSUM.—LATIN: *claudere*, to enclose.

(1) A close, or enclosure of land. (2) Close, or closed, as *breve clausum*, a close writ.

CLAUSUM FREGIT.—He broke the close. See CLOSE.

CLAUSURA HEYÆ.—An enclosure of a hedge.

CLAVES CURIÆ.—The keys of the court. They were the officers of the Scotch courts, such as clerk, doomster, and serjeant.—*Burrill*.

CLAVES INSULÆ.—The keys of the island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.—*Wharton*.

CLAVIA.—A club, or mace.

CLAVIGERATUS.—A treasurer of a church.

CLAWA.—A close, or small measure of land.

CLAYTON'S CASE (1 Meriv. 529).—

§ 1. The leading English authority on appropriation of payments in a current account, *e. g.* that of a banker. In that case Devaynes, the partner in a banking firm, died on the 29th November, 1809, leaving a considerable estate,

and the surviving partners carried on the business on their own account until July, 1810, when they became bankrupt. At the death of Devaynes, Clayton had a balance of £1713 on his cash account with the firm. Between the death of Devaynes and the bankruptcy, the payments made to Clayton by the surviving partners largely exceeded the £1713, and the payments so made amounted to £1260 within a few days after Devaynes' death, and before they had received any money whatever from Clayton. But their subsequent receipts largely exceeded the payments, and at the date of the bankruptcy the balance due on the account exceeded the amount of the balance due at Devaynes' death. Under these circumstances, Clayton claimed against the estate of Devaynes the £1713, after deducting the dividends received by him in the bankruptcy of the surviving partners. But it was held that in an account of this kind, in the absence of an express appropriation by the creditor, the first sum paid in is the first one drawn out; in other words, that the first payment by the banker must be set against the first receipt, and so on: consequently, no part of the £1713 remained due by the estate of Devaynes, because it had been drawn out by Clayton.

§ 2. The rule in Clayton's Case does not apply where a person in a fiduciary position (*e. g.* a trustee) has paid money held by him in that character to his general account, and mixed it with his own money; for, in such a case, when he withdraws money from the account for his own purposes, he is deemed to withdraw it from that part of the fund which belonged to him, so as to leave the trust money intact. *In re Hallett's Estate*, 13 Ch. D. 696.

CLEAN HANDS are required from a plaintiff, *i. e.* he must be free from reproach in his conduct. But there is this limitation to the rule, that his conduct can only be excepted to in respect of the subject-matter of his claim; everything else is immaterial. The rule is more frequently applied in equity than at common law.—*Wharton*.

CLEANSE AND REPAIR A RIVER, (in a statute). 2 Chit. 658.

CLEAR.—In asserting an estate to be of any given "clear" yearly rent, the parties should attend to the meaning of the word "clear" in an agreement between buyer and seller, which is free of all outgoings, incumbrances, and extraordinary charges not according to the custom of the country, as tithes, poor-rates, church-rates, &c., as these are natural charges on the tenant, but subject nevertheless to the land-tax and all other outgoings which, according to such custom, ought to be borne by the landlord. Sugd. V. & P. (14 edit.) 222.

CLEAR, (defined). Amb. 239.

— (when means free from taxes). 2 Atk. 376.

— (in a will). 1 Turn. & R. 433; 2 Ves. Sr. 500.

CLEAR ANNUAL VALUE, (in statute concerning taxes). 103 Mass. 149.

CLEAR DAYS.—If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively as well of the first day as the last. 1 Chit. Arch. Pr. (12 edit.) 163.

CLEAR DEED, (in a covenant). 3 Watts & S. (Pa.) 563, 565.

CLEAR LANDS, (defined). 10 Ind. 32, 37.

CLEAR OF ALL CHARGES AND ASSESSMENTS WHATEVER, (in a deed). 4 Yeates (Pa.) 386.

CLEAR OF ALL DEDUCTIONS, (in a will). 2 Sim. 492.

CLEAR OF ALL EXPENSES, (in an agreement for the sale of land, construed). 2 Ves. & B. 341; 8 Com. Dig. 353.

CLEAR OF ALL TAXES, &c., (includes parliamentary taxes). 12 Mod. 54. *And see* 3 Com. Dig. 266.

CLEAR YEARLY INCOME, (in a statute concerning paupers). 6 Mass. 50, 54.

CLEAR YEARLY VALUE, (in a will). Amb. 237.

CLEARANCE.—A certificate that a ship has been examined and cleared at the custom-house. It is given by the collector of the port to the master of the vessel, and is authority for her departure from the port. *See* 3 Taunt. 554.

CLEARING — CLEARING HOUSE.—In banking law, a method adopted for exchanging the drafts of different banks, and settling the difference. At fixed hours each day a clerk from each bank attends at the clearing house, bringing all the drafts on the other banks which have been paid into his bank during that day, and delivers to each of the other clerks the obligations he has against his bank, receiving from each the obligations due from his own. Balances are struck at the end of the day, the officers of the clearing house making up the accounts between each bank. The balances are not paid to or received from the other banks as formerly, but are settled with the clearing house. The English and American clearing-house systems are virtually the same, except that private bankers are admitted to the privileges of the clearing house in England and not in America.

CLEARING, (of land, in contract). 10 Ind. 32.

CLEARLY, (defined). 8 Pac. C. L. J. 193.

CLEMENTINES.—The collection of decretals or constitutions of Pope Clement V., made by order of John XXII., his successor, who published it in 1317.

CLERGY.—(1) Persons in holy orders, and ecclesiastical offices, as distinguished from others who were called the "laity." (2) The clerical privilege called "benefit of clergy" (*q. v.*).

CLERGYABLE.—A person entitled to claim the benefit of clergy; also an offence as to which such benefit could be claimed, *e. g.* a clergyable felony.

CLERICAL ERROR.—A mistake in copying or transcribing a written instrument.

CLERICAL TONSURE.—The shaving of the head formerly peculiar to persons in orders, and ecclesiastics. The coifs worn by sergeants-at-law are supposed by some to have been invented to conceal the clerical tonsure. (1 Bl. Com. 24, *n.* (t); 4 *Id.* 367.)—*Burrill.*

CLERICAL PRIVILEGIUM.—*See* BENEFIT OF CLERGY.

Clerici non ponantur in officiis: Clergymen should not be placed in offices, *i. e.* in secular offices. Co. Litt. 96.

Clerici, vel monachi, ne sæcularibus negotiis se immisceant: Clergymen or monks should not mix themselves in secular matters.

CLERICO ADMITTENDO.—*See* ADMITTENDO CLERICO.

CLERICO CAPTO PER STATUTUM MERCATORUM.—A writ for the delivery of a clerk out of prison, who is taken and incarcerated upon the breach of a statute merchant.—*Reg. Orig.* 147.

CLERICO CONVICTO COMMISSO GAOLÆ IN DEFECTU ORDINARI DELIBERANDO.—An ancient writ, that lay for the delivery to his ordinary, of a clerk convicted of felony, where the ordinary did not challenge him, according to the privilege of clerks.—*Reg. Orig.* 69.

CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM.—A writ directed to those who have thrust a bailiwick or other office upon one in holy orders, charging them to release him.—*Reg. Orig.* 143.

CLERICUS.—(1) In the civil law, any one in holy orders; a monk or priest. (2) In old English law, a secular priest; a clerk of a court who issued writs; an officer of the royal household who had charge of the receipt and disbursement of moneys in the several departments of the household.

Clericus et agricola et mercator, tempore belli, ut oret, colat, et commutet, pace, fruuntur (2 Inst. 58): The clergyman, husbandman, and merchant, in order that they may preach, cultivate, and trade, enjoy peace in time of war.

Clericus non connumeratur in duabus ecclesiis (1 Rol.): A clergyman should not be appointed to two churches.

CLERK.—

§ 1. In ecclesiastical law.—Originally a learned man or man of letters, whence the term is appropriated to churchmen, who were called "clerks," and now "clergymen;" the nobility and gentry being bred to the exercise of arms, and none left to cultivate the sciences but ecclesiastics. Where the canon law has full power, the word "clerk" comprehends *sacerdotes, diaconi, subdiaconi, lectores, acolyti, exorcistæ, and ostiarii*. The word has been anciently used for a secular priest, in opposition to a religious or a regular.—*Wharton*.

§ 2. In business law.—An assistant employed to aid in any business, mercantile or otherwise, subject to the advice and direction of his employer.

§ 3. Of court.—An officer of a court having the custody of its records and seal; and whose duty it is, among other things, to certify to the correctness of transcripts from such records.

§ 4. Of market.—The superintendent of a public market. In old English law he was called "*clericus mercati*." He holds a sort of court in the market for the settlement of disputes arising among those doing business there, and is invested with a limited judicial power to that end.

CLERK, (who is not). 20 Wend. (N. Y.) 72.
—— (acting as, does not authorize him to sign notes). 2 Wheel. Am. C. L. 198.

—— (authority of, to sell). 18 Johns. (N. Y.) 363.

—— (bank, how far liable for acts of). 4 Johns. (N. Y.) 377.

—— (certificate of, as to election, not sufficient). 3 Wheel. Am. C. L. 491.

—— (entry made by, in bank book). 5 Wheel. Am. C. L. 152.

—— (of banking company, acts as agent of customer). 7 Wheel. Am. C. L. 36.

—— (right of partners to appoint). 1 Dall. 269.

—— (under statute, who included as). 73 N. Y. 437, 442.

—— (who is, "by virtue of his employment"). 1 Russ. & R. Cr. Cas. 319.

CLERK OF ASSIZE.—The officer who is responsible for the due performance of the administrative duties of the courts of assizes on each circuit. He performs the same duties on circuit which the associates formerly performed, and which the masters now perform, at the sittings at *Nisi Prius*, in London and Middlesex, (Archb. Pr. 15; see ASSOCIATES;) and he also acts as clerk to the crown on circuits, by which, apparently, is meant, that he performs similar functions when the courts of assize are sitting for criminal business. It seems, however, that "on several circuits the clerk of assize rarely attends in court," and that "on five of the great circuits the functions of the clerk are wholly or partially performed by his deputy," who also acts as clerk of arraigns or clerk of indictments (*q. v.*) on the same circuit.

CLERK OF THE CROWN.—As to the duties performed by the clerk of assize as clerk of the crown, see CLERK OF ASSIZE. There is a clerk of the crown for each of the counties Palatine of Durham and Lancaster, who performs the same duties as are performed in ordinary counties by the clerk of assize in his character of clerk of the crown.

CLERK OF THE CROWN IN CHANCERY.—See CROWN OFFICE IN CHANCERY.

CLERK OF ENROLMENTS.—The former chief officer of the English enrolment office (*q. v.*) He now forms part of the staff of the central office (*q. v.*), but the office is to be abolished on the next vacancy.

CLERK OF THE HANAPER.—See HANAPER.

CLERK OF THE HOUSE OF COMMONS.—One of the chief officers of the lower house of the English parliament. He is appointed by the crown as under-clerk of the parliaments to attend upon the commons. He makes a declaration, on entering upon his office, to make true entries, remembrances and journals of the things done and passed in the house. He signs all orders of the house, indorses the bills sent or returned to the lords, and reads whatever is required to be read in the house. He has the custody of all records and other documents. May Parl. Pr. 289.

CLERK OF THE PARLIAMENTS.—One of the chief officers of the House of Lords. He is appointed by the crown, by letters-patent. On entering office he makes a declaration to make true entries and records of the things done and passed in the parliaments, and to keep secret all such matters as shall be treated therein. (May Parl. Pr. 238.) By Stat. 33 Geo. III. c. 13, the clerk of the parliaments is directed to indorse on every act the date on which it receives the royal assent.

CLERK OF THE MARKET.—See CLERK, § 4.

CLERK OF THE PEACE.—An officer appointed by the *Custos Rotulorum* (*q. v.*), to

assist the justices of the peace in quarter sessions in drawing indictments, entering judgments, issuing process, &c. Pritch. Quar. Sess. 49.

CLERK OF THE PETTY BAG.—See PETTY BAG.

CLERK OF THE PRIVY SEAL.—There are four of these officers, who attend the lord privy seal, or, in the absence of the lord privy seal, the principal secretary of state. Their duty is to write and make out all things that are sent by warrant from the signet to the privy seal, and which are to be passed to the great seal; and also to make out privy seals (as they are termed) upon any special occasion of his majesty's affairs, as for the loan of money and such like purposes. (27 Hen. VIII. c. 11.)—*Cowell*.

CLERK OF THE SIGNET.—An officer in England, whose duty it is to attend on the king's principal secretary, who always has the custody of the privy signet, as well for the purpose of sealing his majesty's private letters, as also grants which pass his majesty's hand by bill signed; there are four of these officers. (27 Hen. VIII. c. 11.)—*Cowell*.

CLERKS OF ARRAIGNS.—Officers attached to the Central Criminal Court in England, and to each circuit. The clerk of arraigns "has to discharge for the judge sitting on the crown side (*i. e.* in criminal cases) the duties which are discharged for him by a master on the civil side: taxation of costs, allowances to witnesses, the business connected with jurors, their excuses and fines, the custody of documents, the duty of recording verdicts and making out warrants after sentence, are, in addition to advising the court upon points of criminal procedure, among the duties of the clerk of arraigns." Second Rep. Legal Dep. Comm. (1874) 22.

CLERKS OF INDICTMENTS.—Officers attached to the Central Criminal Court in England, and to each circuit. They prepare and settle indictments against offenders and assist the clerk of arraigns. Second Rep. Legal Dep. Comm. 23.

CLERKS OF RECORDS AND WRITS.—Officers formerly attached to the English Court of Chancery, whose duties consisted principally in sealing bills of complaint and writs of execution, filing affidavits, keeping a record of suits, and certifying office copies of pleadings and affidavits. They were three in number, and the business was distributed among them according to the letters of the alphabet. (Second Rep. Legal Dep. Comm. 43.) By the Judicature Acts, 1873, 1875, they were transferred to the Chancery Division of the High Court. Now, by the Judicature (Officers) Act, 1879, they have been transferred to the central office of the Supreme Court, under the title of masters of the Supreme Court, and the office of clerk of records and writs has been abolished.

CLERKS OF SEATS, in the principal registry of the probate division of the English High Court, discharge the duty of preparing and

passing the grants of probate and letters of administration, under the supervision of the registrars. There are six seats, the business of which is regulated by an alphabetical arrangement, and each seat has four clerks. They have to take bonds from administrators, and to receive caveats against a grant being made in a case where a will is contested. They also draw the "acts," *i. e.* a short summary of each grant made, containing the name of the deceased, amount of assets and other particulars. Second Rep. Legal Dep. Comm. 79.

CLERK OR SERVANT, (in statute relative to embezzlement). L. R. 2 C. C. R. 34; *Id.* 150.

CLERK—REGULAR CLERK, (under charter, who is). 23 Hun (N. Y.) 320.

CLERK SLEEPS IN THE STORE, (in a policy of insurance). 27 Pa. St. 325.

CLERKS, (defined). 1 Chit. Gen. Pr. 80.

CLERKSHIP.—The period which a student of the law is required to spend in the office of a practicing attorney or solicitor, to render himself eligible for examination for admission to practice.

CLERKSHIP, (in a rule of court). 1 Serg. & R. (Pa.) 193.

— (certificate of attorney, must state what). 4 Johns. (N. Y.) 191; 3 *Id.* 261. *And see* 2 Chit. Gen. Pr. 5.

CLIENT.—LATIN: *cliens*, said to contain the same element as the verb *clueo*, to hear or obey, and accordingly compared by Niebuhr with the German word *hoeriger*, a dependent.

A person who seeks advice of a lawyer, or commits his cause to the management of one, either in prosecuting a claim, or defending a suit in a court of justice.

CLOERE.—A prison or dungeon.

CLOSE.—

§ 1. In the law of real property, close signifies a piece of land, and a trespass on a man's land was formerly described as a breach of his close, or trespass *quare clausum fregit*. "For every man's land is, in the eye of the law enclosed and set apart from his neighbors'; and that either by a visible and material fence, as one field is divided from another by a hedge, or by an ideal, invisible boundary, existing only in the contemplation of the law, as when one man's land adjoins to another's in the same field." 3 Bl. Com. 209. *See* BOUNDARIES; TRESPASS.

§ 2. In procedure, close signifies conclusion. Thus the close of the pleadings is where the pleadings are finished, *i. e.* when issue has been joined. (*See* ISSUE; PLEADING.) So, when evidence is taken

by affidavit, it is said to be closed when the affidavits in reply have been filed, and evidence is said to close on a trial before the court, or court and jury, when the party producing it rests his case.

CLOSE, (defined). 3 Scam. (Ill.) 253; 1 Chit. Gen. Pr. 160; 7 East 200, 207.

— (distinguished from "enclosure"). 39 Vt. 326.

— (in an action of ejectment). 11 Co. 55.

— (imports possession). 10 Mod. 169.

— (in a plea). 2 Barn. & Ad. 99, 104.

CLOSE COPIES.—In old practice, copies of papers which might contain as many words to a sheet as the writer pleased, as opposed to "office copies," which were required to contain a prescribed number of words, and no more, on each sheet.

CLOSE ROLLS—CLOSE WRITS.—Royal letters, under the great seal, addressed to particular persons for particular purposes, which, because they are not intended for public inspection, are closed and sealed, and recorded in the close rolls; hence their name. 2 Bl. Com. 346.

CLOSED ON SUNDAY, (in Sunday laws). 33 Mich. 279.

CLOSING AN ACCOUNT, (by death). 8 Pick. (Mass.) 187.

CLOSING OUT, (defined). 43 Superior (N. Y.) 451.

CLOTHES AND LINEN, (in a will, passes body linen only). 3 Bro. Ch. Cas. 312.

CLOUGH.—(1) A valley.—*Domesday Book*. (2) An allowance of two pounds in every hundred weight for the turn of the scale, on buying goods wholesale by weight.—*Lex Merc*.

CLOUD ON TITLE.—A proceeding or instrument, such as a deed or mortgage, or a tax or assessment, judgment or decree, which, if valid, would apparently, and on its face, impair the title of a person to land; but which is in fact invalid, such invalidity being demonstrable by proof of extrinsic facts. Equity has jurisdiction of actions brought to remove clouds on title by cancellation of instruments creating them.

CLOUD ON TITLE, (defined). 34 Mich. 170.

CLUB.—

§ 1. A voluntary association of persons for social purposes, and sometimes also for purposes of a literary or political nature, or the like. A club is not a partnership. (*Fleming v. Hector*, 2 Mees. & W. 172.) In some clubs the expenses are borne by a contractor, who receives the subscriptions

of the members, and makes his profit out of the difference; these are called "proprietary clubs."

§ 2. A club is regulated by the rules agreed to by the members, and for the time being in force, and, therefore, if a member is expelled from a club by a decision which has been arrived at *bonâ fide* in accordance with the rules and in a judicial manner, without caprice or improper motive, the court cannot interfere. (*Hopkinson v. Marquis of Exeter*, L. R. 5 Eq. 63.) In a proper case, however, the court will grant an injunction to prevent a member from being deprived of the benefits of the club. *Fisher v. Deane*, 11 Ch. D. 353.

CLUB LAW.—Regulation by force; the law of arms.

CLUB STICKS, (are not offensive weapons within the statute). 1 Leach Cr. Cas. 342 n.

CLYPEUS, or **CLIPEUS**.—A shield metaphorically one of a noble family. *Clypei prostrati*, noble families extinct.—*Wharton*.

COACH, (defined). 9 Ohio 11.

COADJUTOR.—**LATIN**: *coadjuvare*, to aid or help.

(1) The coadjutor of an executor is the same thing as an overseer (*q. v.*) (2) In the old writers, coadjutor signifies one who disseizes a person of land to the use (*i. e.* for the benefit) not of himself, but of another. (Litt. § 278.) (3) A bishop's assistant.

CO-ADMINISTRATOR.—One who is a joint administrator with one or more others.

COADUNATIO.—A uniting or combining together, of persons; a conspiracy. 9 Co. 56.

COAL, (in a policy of insurance). 109 Mass. 384.

COAL NOTE.—A particular description of promissory note formerly in use in the port of London. (*See* 3 Geo. II. c. 26, §§ 7, 8; repealed by 47 Geo. III. sess. 2, c. lxviii. § 28.)—*Wharton*.

COALITION.—In the French law, an unlawful combination, or conspiracy.

CO-ASSIGNEE.—One of two or more assignees of the same subject-matter.

COAST.—The strip of land which borders the sea; the sea shore. The word, however, is of narrower meaning than

"shore," it being confined to land bordering on the sea, while "shore" applies as well to the margin of lakes and rivers.

COAST, (in U. S. statute). Bee (U. S.) 204.

COASTER, (in statute regulating pilotage). 14 Mass. 17.

COASTING LICENSE, (right to run steamboat under). 17 Johns. (N. Y.) 509.

COASTING TRADE.—Trade or commerce along the coast between ports situate within the territory of the United States, as distinguished from commerce with foreign ports. The distinction is important owing to the different systems regulating the two species of commerce under the federal laws.

COASTING TRADE, (defined). 3 Cow. (N. Y.) 713.

— (ferry-boat is not engaged in). 1 Newb. Adm. 241, 252, 256.

— (right of State to regulate). 3 Cow. (N. Y.) 736.

— (under act of congress, what vessels may engage in). 17 Johns. (N. Y.) 494.

COASTWISE, (what vessels are). 10 Cal. 504.

COAT-ARMOR.—Heraldic ensigns, introduced by Richard I. from the Holy Land where they were first invented. Originally they were painted on the shields of the Christian knights, who went to the Holy Land during the crusades, for the purpose of identifying them, some such contrivance being necessary in order to distinguish knights, when clad in armor, from one another.—*Wharton*.

COCKET.—A seal belonging to the custom house; a scroll of parchment, sealed and delivered by the officers of the custom house to merchants, as a warrant that their merchandises are entered; likewise a sort of measure.—*Fleta* 1, 2, c. ix.; *Reg. Orig* 192; *Termes de la Ley*.

COCKSETUS.—A boatman, a cockswain.—*Cowell*.

COCK-PIT.—A name which used to be given to the judicial committee of the privy council, the council room being built on the old cock-pit of Whitehall Place.—*Wharton*.

CO-CREDITORS — CO-DEBTORS — CO-OWNERS.—See **JOINT**.

COCULA.—A cogue or drinking cup.

CODE—CODIFICATION.—

§ 1. **Meaning of "code."**—The term "code" is used in various senses. In the *Corpus Juris Civilis* it is used to signify a consolidation of the statute law, namely, a collection of enactments arranged systematically, with all obsolete and incon-

sistent enactments omitted. In modern times the term is more commonly used to signify a new enactment containing legislative rules of law relating to a particular subject (*e. g.* civil law, criminal law, procedure, evidence, or the like). Such a code differs from that of Justinian in being expressed in new language, instead of being a mere re-arrangement of existing enactments.

§ 2. **Distinguished from "digest."**—A code differs from a digest (*q. v.*) in consisting of abstract rules of law; a digest, in the proper sense of the word, is a collection of concrete cases. As to codes generally, see *Holland on the Form of the Law, passim*; 1 *Holtz. Encycl.* 227; *Savigny's* admirable essay, "*Vom Beruf unserer Zeit, &c.*" (see *SAVIGNY*), and the works of *Austin* and *Bentham*.

§ 3. **Codification** is the process of converting the law of a country, or a portion of it, into a code, whether that law consists of statutes, or case-law, or customs, or all three. Codification is in theory a formal process, as opposed to legislation; *i. e.* the codifier takes the law as he finds it, without reference to its expediency, and merely puts it in a more convenient shape; in practice, however, codification is impossible without introducing amendments of the law, in matters of detail at least.

§ 4. The most celebrated modern codes are those of Napoleon, of New York, and of Louisiana; that of New York has been used as a foundation for many others, and in some States, almost literally copied. Several codes have been promulgated in India, and a code of the criminal law has long been under discussion in England.

CODE CIVIL.—The French civil code promulgated by Napoleon in 1804, and afterwards, under the Empire, called the "Code Napoleon."

CODEX.—A roll or volume.

CODEX GREGORIANUS, and HERMOGENIANUS.—It does not appear quite certain whether this title denotes one or two collections. The general opinion, however, is, that there were two *codices*, compiled respectively by *Gregorianus* and *Hermogenianus*, who are sometimes, though, as it seems, incorrectly, called "*Gregorius* and *Hermogenes*." The *codex* of *Gregorianus* consisted of thirteen books, at least, which were divided into titles. The fragments of this *codex* begin with *consti-*

tutions of Septimus Severus, and end with Diocletian and Maximian. The *codex* of Hermogenianus, so far as we know of it, is only quoted by titles, and it also contains constitutions of Diocletian and Maximian; it may perhaps have consisted of one book only, and it may have been a kind of supplement or continuation to, or an abridgment of, the other. The name Hermogenianus is always placed after that of Gregorianus when this code is quoted. (Smith's Dict. of Antiq.)—*Wharton*.

CODEX JUSTINIANEUS.—A collection of imperial constitutions, made by a commission of ten persons appointed by Justinian, A. D. 528.

CODEX REPETITÆ PRÆLECTIONIS.—The new code of Justinian, issued A. D. 534, being the one now extant.—*Burrill*.

CODEX THEODOSIANUS.—The code of Theodosius, commonly called the "Theodosian Code." 1 Bl. Com. 81.

CODEX VETUS.—The original, or old code of Justinian, long since lost.

CODICIL.—*LATIN: codicilli*, a little book, especially a note-book, for informal letters. (2 Ortolan Inst. 660.) In Roman law *codicilli* meant an informal or "unsolemn" testamentary disposition, as opposed to a *testamentum*, which appointed a *heres* or executor, and was executed with formalities. (2 Just. Inst. 25.) It is said by old writers, that in English law also codicil meant an "unsolemn last will," not containing the appointment of an executor (Wms. Ex. 7, citing the works of Swinburne and Godolphin); but whether this is really so, or whether these writers merely copied the passages on codicils from Justinian, is not clear.

§ 1. A codicil is an instrument executed by a testator for adding to, altering or explaining a will previously made by him. It is in law part of the will, and the will and codicils (if more than one) make but one testament. (Wms. Ex. 8). A codicil must be executed with the same formalities as a will.

§ 2. Nuncupative codicil.—In England, before the Wills Act (1 Vict. c. 26), a testator could make a nuncupative or word of mouth disposition of property undisposed of by his written will, and such a disposition was called a "nuncupative codicil." (Wms. Ex. 117.) Nuncupative testamentary dispositions have been abolished by the Wills Act in all but a very few cases. See WILL.

CODICIL, (defined). 2 Bl. Com. 500; Love. Wills 185.

— (acts as a republication). 1 Hill (N. Y.) 590.

COEMPTIO.—A process of conveyance *per aes et libram*, whereby a woman was placed in *manu* of the purchaser or grantee; and such purchaser or grantee might either be a stranger or the husband of the woman; and if he was her husband, then besides being in *manu* she was also put in *loco filiae* to him. *Coemptio* to the

husband was said to be *matrimonii causâ*; to a stranger it was said to be *fiduciae causâ*, e. g. to get rid of an old tutor and obtain a new one.—*Brown*.

CO-EMPTION.—The act of purchasing the entire quantity of any commodity.

COERCION.—Constraint; compulsion; force. See DURESS; MARITAL COERCION.

COERCION BY LAW, (defined). 70 N. Y. 497, 501.

COERCION IN FACT, (defined). 70 N. Y. 497, 501.

CO-EXECUTOR.—One who is a joint executor with one or more others.

COFFEE HOUSE, (distinguished from "inn"). 3 Harr. (N. J.) 483; 6 Wend. (N. Y.) 627; 4 Campb. 73, 76.

— (held to be an "inn"). 3 Barn. & Ald. 283.

COFFER, (in an indictment). 2 Hale P. C. 183.

COFFERER OF THE QUEEN'S HOUSEHOLD.—A principal officer of the royal establishment, next under the controller, who, in the counting-house and elsewhere, had a special charge or oversight of the other officers, whose wages he paid.—*Wharton*.

Cogitationis pœnam nemo meretur (2 Inst. Jur. Civ. 658): No one deserves to be punished for a thought.

COGNATES.—Relatives through a female line.—*Bell Dict.*

COGNATI.—Relations by the mother's side. (2 Bl. Com. 235; see AGNATES.) Relations by the mother's side, i. e. derived *per femine sexus personas*. A cognate is related by conception; thus, my mother, grandmother, daughter's children, and maternal uncle and aunt, are cognate to me.—*Wharton*.

COGNATIO.—Relationship; especially relationship through females.

COGNISANCE.—See COGNIZANCE.

COGNISOR—COGNISEE.—The former is he who passed or acknowledged a fine of lands or tenements to another; the latter is the person to whom the fine of the said lands, &c., was acknowledged. 32 Hen. VIII. c. 5.

COGNITIONES.—Ensigns and arms, or a military coat painted with arms.—*Mat. Par.* 1250.

COGNITIONIBUS ADMITTENDIS.—An obsolete writ to one of the justices of the common pleas, or other, who has power to take a fine, who having taken the fine defers to certify it, commanding him to certify it.—*Reg. Orig.* 68.

COGNITIONIS CAUSÆ.—For the purpose of ascertaining. The Scotch law term to designate a judgment or decree ascertaining the amount of a debt due from the estate of a deceased land owner.—*Bell Dict.*

COGNITOR.—A person appointed by one of the parties to a suit to conduct it for him.

COGNIZANCE, or CONUSANCE.—

§ 1. The hearing of a thing judicially; also an acknowledgment of a fine; and in replevin it was the pleading of a defendant who acted as bailiff, &c., to another, in making a distress, by which he alleged the right or title to be in that person by whose command he acted. If the person who ordered the distress was sued, his pleading was called an "avowry." Steph. Pl. 225.

§ 2. **Cognizance of pleas.**—A privilege granted by the crown to a city or town, to hold pleas of all contracts, &c., within the liberty of the franchise; and when a person is impleaded for such matters in the courts of Westminster, the mayor, &c., of such franchise may ask cognizance of the plea, and demand that it shall be determined before them; but if the courts of Westminster are possessed of the plea before cognizance be demanded, it is then too late.—*Termes de la Ley.*

§ 3. **Judicial cognizance.**—Knowledge upon which a judge is bound to act without having it proved in evidence; as the public statutes of the realm, the ancient history of the realm, the order in course of proceedings in parliament, the privileges of the House of Commons, the existence of war with a foreign State, the several seals of the queen, the superior courts and their jurisdiction, and the privileges of their officers, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries.—*Wharton.* See JUDICIAL NOTICE.

COGNIZANCE, (in a statute conferring jurisdiction). 12 Pet. (U. S.) 636; 5 Cush. (Mass.) 386.

COGNIZEE—COGNIZOR.—See COGNISEE; COGNISOR.

COGNOMEN.—A family name; a surname. Among the Romans a man had three names: (1) the *prænomen*, which designated the man himself as an individual; (2) the *nomen*, which indicated the *gens* to which he belonged, and (3) the *cognomen*, which was his family name. Sometimes a fourth name, the *agnomen* (*q. v.*) was added.

Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum ab eventu (6 Co. 65): The cognomen is derived from the blood of ancestors, and is intrinsic; an agnomen arises from an event, and is extrinsic.

COGNOVIT ACTIONEM.—

§ 1. In common law practice.—He has confessed the action. A confession of judgment (*q. v.*) in writing, signed but not sealed, and given to plaintiff after declaration filed, in which

respect it differs from a warrant of attorney (*q. v.*) which is given before suit brought, and is under seal.

§ 2. In present English practice.—Where the defendant in an action in one of the common law divisions of the High Court has no defence, he may give the plaintiff a written confession of the action, upon condition that he shall be allowed a certain time for the payment of the debt or damages, the amount of which is generally agreed upon. This is called a "cognovit" (*cognovit actionem*). It impliedly authorizes the plaintiff's solicitor to do everything necessary to obtain judgment against the defendant if he fails to comply with the conditions on which time is given. That part of the document which contains the terms on which the defendant is to be allowed to discharge the plaintiff's claim is called the "defeasance:" it must be written on the same piece of paper as the cognovit. The cognovit must be attested by a solicitor, whose duty it is to inform the defendant of its nature and effect, and it must be filed within twenty-one days after execution, or it will be void. (Archb. Pr. 755; Debtors' Act, 1869, § 24 *et seq.* Under the old practice a cognovit given after plea was called a *cognovit actionem relicta verificatione*. Chitty Pr. 942.) Cognovits are not now of frequent occurrence.

COGNOVIT ACTIONEM, (defined). Hob. 178.

—— (in a statute). 5 Barn. & C. 650.

—— (to authorize entry of judgment in vacation). 6 Johns. (N. Y.) 325.

COHABIT.—(1) To dwell together in the same house. (2) To live together as husband and wife.

COHABIT, (primary meaning). 54 Me. 365; 10 Mass. 153.

COHABITATION.—Agreements and bonds to induce future illicit cohabitation are void, but when in consideration of past cohabitation (*i. e.* in consideration of nothing) they are good (3 Macn. & G. 100, *n. (c)*). In England, either a husband or a wife may compel cohabitation by action for the restitution of conjugal rights and otherwise; but when the husband has committed an aggravated assault upon his wife, she may be protected, by order of the convicting magistrate, from any resumption of the cohabitation.—*Brown.*

COHABITATION, (defined). 75 Pa. St. 207; 2 Crompt. & J. 66.

—— (unlawful, defined). 32 Ark. 187.

COHABITING, (in statute of crimes). 10 Mass. 153, 159.

Cohæredes una persona censentur, propter unitatem juris quod habent (Co. Litt. 163): Co-heirs are deemed as one person, on account of the unity of right which they possess.

CO-HEIR.—One of several persons to whom an inheritance descends.

CO-HEIRESS.—A female who has an equal share of an inheritance with another female.

COHUAGIUM.—A tribute made by those who meet promiscuously in a market or fair.—*Du Cange*.

COIF.—OLD FRENCH: *coif* or *coiffe*; LOW LATIN: *cofia*, a cap. Skeat Etym. Dict.

A white silk cap which sergeants-at-law are supposed to wear in court, as "a badge that they are graduates in law." (*Portes. de Laud. ch. 50.*) It was originally used to cover the crown of the head, which was closely shaved, and a border of hair left round the lower part, which made it look like a crown, and was thence called *corona clericalis*, or *tonsura clericalis*.—*Cowell*.

COIN.—FRENCH: *coign*; LATIN: *cuneus*, a wedge.

A piece of metal stamped with certain marks, and made current at a certain value. Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, &c., which has currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called coining. The coining of money is in all States the prerogative of the sovereign power; and, as money is the medium of commerce, it is the sovereign's prerogative and monopoly, as arbiter of domestic commerce, to give it authority or make it current.—*Wharton*. See **COUNTERFEIT COIN**; **UTTER**.

COIN, (defined). 22 Ind. 282; 16 Gray (Mass.) 241.

COIN MONEY, (issue of treasury, not exercise of power to). 8 Wall. (U. S.) 603, 616.

—(State no power to). 11 Pet. (U. S.) 258.

CO-JUDICES.—In old English law, associate judges having equality of power with others.—*Burrill*.

COKE.—Edward Coke was born 1st February, 1551–2, called to the bar in 1578, became recorder of London, 1591–2, solicitor-general, 1592, member and speaker of the House of Commons, 1593, attorney-general, 1594, was knighted on the accession of James I., made chief justice of the Common Pleas, 1606, of the King's Bench, 1613, from which office he was removed in

1616, in consequence of his resistance to the king and Court of Chancery; he was again returned to parliament in 1621, and died on September 3d, 1633. His principal works are—(1) the so-called Institutes of the Laws of England, in four parts, consisting of the celebrated Commentary on Littleton's Treatise on Tenures, a commentary on many old acts of parliament, a treatise on Pleas of the Crown, and an account of the various courts; (2) eleven volumes of reports; and (3) a volume of law tracts, published after his death, including the "Compleat Copyholder." *Foss's Biog. Dict.*; 1 Bl. Com. 72.

COLD WATER ORDEAL.—The trial which was ordinarily used for the common sort of people, who, having a cord tied about them under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the water were held culpable, being, as they said, of the water rejected and kept up.—*Wharton*.

COLIBERTS.—Tenants in socage, particularly such villeins as were manumitted or made freemen; but they had not an absolute freedom, for though their condition was better than that of servants, yet they had superior lords, to whom they paid certain duties, and in that respect they might be called servants, though they were of middle condition, between freemen and servants.—*Du Cange*.

COLLATERAL.—LATIN: *con*, with, and *latus*, the side.

That which is by the side of, and distinct from, a certain thing.

COLLATERAL, (in statute of distribution). 12 Mod. 410.

COLLATERAL ACT.—In the old books, when a bond, recognizance, or the like, was entered into to secure the performance of some act, such as to execute a conveyance, build a house, &c., it was called "a bond to do a collateral act," as opposed to a bond for the payment of money (9 Co. 79a), apparently because in the latter case the act and the penalty are both of the same nature.

COLLATERAL ANCESTORS.—Uncles and aunts and other ascending collateral relatives who are not strictly ancestors. 3 Barb. (N. Y.) Ch. 438, 446.

COLLATERAL ASSURANCE.—One which is independent of, but subordinate to, an assurance or agreement affecting the same subject-matter. Thus, where A. agreed to take a lease of B.'s

land, but finding, on examination, that it was overrun with rabbits, declined to sign the lease unless B. would promise to destroy the rabbits, which B. did, but no term to that effect was inserted in the lease, which provided that A. should preserve the game on the land, and reserved the right of sporting to B., it was held that the agreement by B. to destroy the rabbits was collateral to the lease, and could, therefore, be taken advantage of by A., although it had not been inserted in the lease. *Morgan v. Griffith*, L. R. 6 Ex. 70; *Salaman v. Glover*, L. R. 20 Eq. 444.

COLLATERAL CONSANGUINITY.—The relationship between persons who are descended from the same ancestor (brothers, cousins, &c.), as opposed to lineal consanguinity, which exists between persons of whom one is descended from the other (father and son, grandfather and grandson, &c.) See CONSANGUINITY; DESCENT.

COLLATERAL DESCENT.—Descent in a transverse or zigzag line, *i. e.* up through the common ancestor and then down from him; descent to collaterals.

COLLATERAL ESTOPPEL.—The collateral determination of a question by a court having general jurisdiction of the subject. (See 26 Vt. 209.)—*Bouvier*.

COLLATERAL FACTS.—Facts which are not directly connected or involved with the principal matter or issue in dispute.

COLLATERAL IMPEACHMENT.—A term frequently used in respect of the conclusiveness of judgments, the general rule being that a judgment of a court of record cannot be collaterally impeached, *i. e.* in an action other than that in which it was rendered, except upon proof of fraud or want of jurisdiction.

COLLATERAL ISSUE.—

§ 1. In the law of evidence, a collateral issue is a question which is not immediately or mediately a matter in dispute in the proceeding. Thus, it is not allowable to adduce evidence as to particular acts of misconduct by a witness with a view of discrediting his testimony, because

that would raise a collateral issue. *Best Ev.* 803. See CHARACTER.

§ 2. In criminal procedure, when a prisoner has been found guilty, and on being asked why execution should not be awarded against him, pleads in bar of execution that he is not the person who has been found guilty (called a plea of diversity of person or non-identity), a jury is impaneled to try this collateral issue. 4 Bl. Com. 396.

COLLATERAL KINSMEN.—See COLLATERAL CONSANGUINITY.

COLLATERAL LIMITATION.—A limitation of an estate which gives an interest for a specified period, but makes the right of enjoyment to depend on some collateral event, as an estate to A. till B. shall go to Rome. *Park Dow.* 163; 4 Kent. Com. 128.

COLLATERAL PROCEEDING, (defined). 39 Ill. 256.

COLLATERAL SECURITY.—One which is given in addition to the principal security. Thus, a person who borrows money on mortgage (which is the principal security) may deposit bonds or stocks with the lender as collateral security. But where A. mortgaged to B. freehold land, and also on the same day, and as part of the same transaction, mortgaged to B. leaseholds as collateral security for the same advance, it was held that the leasehold security was not collateral in the sense of secondary, and that accordingly the debt was payable ratably out of the two securities, and not primarily out of the freeholds.

COLLATERAL SECURITY, (defined). 16 Ch. D. 211, 217 *et seq.*

—— (acceptance of). 15 Wend. (N. Y.) 155.

—— (how considered). 1 Johns. (N. Y.) Ch. 129.

—— (in mechanics' lien law). 39 Iowa 311.

—— (note taken as). 2 Hill (N. Y.) 301; 9 Wend. (N. Y.) 241; 4 Watts (Pa.) 141.

—— (power to loan on). 2 Abb. (U. S.) 416.

—— (what intended as). 14 Johns. (N. Y.) 404.

COLLATERAL WARRANTY.—In alienating property by deed, there was usually a clause in it called the "clause of

warranty," whereby the grantor, for himself and his heirs, warranted and secured to the grantee the estate so granted. This warranty was either *lineal* or *collateral*. *Lineal warranty* was where the heir derived or might by possibility have derived his title to the land warranted, either from or through the ancestor who made the warranty; as where a father, or an elder son in the life of the father, released to the disseisor of either themselves or the grandfather, with warranty, this was lineal to the younger son. *Collateral warranty* was where the heir's title to the land neither was nor could have been derived from the warranting ancestor; as where a younger brother released to his father's disseisor, with warranty, this was collateral to the elder brother.—*Brown*.

COLLATERALIS ET SOCH.—The ancient title of masters in chancery.

COLLATIO BONORUM.—A contribution of goods. Where a portion of money, advanced by the father to a son or daughter, is brought into hotchpot, (*q. v.*) in order to have an equal distributory share of his personal estate at his death.

COLLATION.—The comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

COLLATION OF SEALS.—When upon the same label one seal is set on the back or reverse of the other.

COLLATION TO A BENEFICE.—The ceremony by which a bishop admits and institutes a clerk to a church or benefice in his (the bishop's) own gift, whether as patron or by lapse; it is equivalent to the two acts of presentation and institution, which are necessary in cases where the patron and the bishop are different persons. (Phillim. Ecc. L. 348, 467; 1 Bl. Com. 390.) When the benefice is in the bishop's own gift, it is sometimes called a "collative advowson." See *ADVOWSON*.

COLLATIONE FACTA UNI POST MORTEM ALTERIUS.—A writ directed to justices of the common pleas, commanding them to issue their writ to the bishop for the admission of a clerk in the place of another presented by the crown, where there had been a demise of the crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation upon another.—*Reg. Orig.* 31.

COLLATIONE HEREMITAGII.—A writ whereby the king conferred the keeping of an hermitage upon a clerk.—*Reg. Orig.* 303, 308.

COLLECT, (in a statute). 48 Mo. 331.
— (in an agreement). 2 Watts (Pa.) 387, 389.

— (money, attorney employed to). 5 Paige (N. Y.) 313.

— (mortgage, attorney employed to). 5 Paige (N. Y.) 561.

— (right of trustees to appoint clerk to). 5 Paige (N. Y.) 485.

— (note, duty of bank to). 20 Johns. (N. Y.) 372; 9 Wend. (N. Y.) 46.

COLLECT FINES AND PENALTIES, (in a statute). 48 Mo. 331.

COLLECTED, (defined). 5 Abb. (N. Y.) Pr. N. S. 213.

— (contract to pay when money is). 4 Wheel. Am. C. L. 308.

COLLECTIBLE, (in a contract of guaranty). 8 Watts (Pa.) 361.

— (guaranty that note is). 1 Wend. (N. Y.) 457.

COLLECTIBLE IN DUE COURSE OF LAW, (guaranty that note is). 19 Johns. (N. Y.) 69.

COLLECTION, (defined). 13 Wend. (N. Y.) 545.

— (guaranty as to note). 2 Hill (N. Y.) 139.

— (note received by attorney for). 3 Johns. (N. Y.) 185.

— (note sent to agent for). 2 Hill (N. Y.) 451.

— (person intrusted with money for). 9 Johns. (N. Y.) 71.

COLLECTION, FOR, (in a statute). 3 Wend. (N. Y.) 128.

COLLECTOR.—(1) A person appointed by another to collect debts and demands due to him. (2) A public officer whose function it is to demand and collect taxes and other public dues and revenue.

COLLECTOR, (of a municipality). 13 Vr. (N. J.) 80.

COLLECTOR OF DECEDENT'S ESTATE.—A person appointed (pending a long controversy, whether a will shall be admitted to probate and an executor qualified, or shall be rejected and an administrator appointed) to gather in assets of a decedent's estate, receive rents, &c., demand bills payable as they mature, and keep the proceeds, until the question, who is to administer, is decided.—*Abbott*.

COLLECTOR OF TAXES, (in a statute). 15 Mass. 523.

— (power to sell lands). 6 Wheat. (U. S.) 119.

— (writ of prohibition will not lie to). 1 Hill (N. Y.) 197.

COLLECTOR OF THE CUSTOMS.—A federal officer appointed by the president, by and with the advice and

consent of the senate, for the term of four years, and removable at the president's pleasure. For an enumeration of his various duties, *see* 1 Story U. S. Laws 590, 592, 612, 620, 632, 659; 3 *Id.* 1650, 1697, 1759, 1761, 1791, 1811, 1848, 1854.

COLLECTOR OF THE CUSTOMS, (defined). 10 Pet. (U. S.) 95.

COLLEGA.—In the civil law, an associate or colleague.

COLLEGATARIUS.—A person to whom a legacy is left in common with other persons.

COLLEGE.—LATIN: *colligo*, to bring to.

§ 1. In English law.—A civil corporation, company or society of men, having certain privileges and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called an "university."

§ 2. In American law.—An institution of learning, where youth are instructed in the higher branches. Colleges are usually incorporated and endowed, and enjoy certain privileges granted them by charter.

COLLEGE, (defined). 7 Mass. 460.

COLLEGIA.—The guild of a trade.

COLLEGIATE CHURCH.—A religious house built and endowed for a society or body corporate, a dean or other president and secular priest, as canons or prebendaries, independently of any cathedral.—*Jacob*.

COLLEGIUM.—A civil law term, having nearly the same signification as the English meaning of "college" (*q. v.*) When confirmed by special enactment, *senatus consultum*, or imperial constitution, it was called *collegium licitum* or *legitimum*. Otherwise it was *collegium illicitum*, illegal. 2 Kent Com. 268, 269.

Collegium est societas plurium corporum simul habitantium (Jenk. Cent. 229): A college is a society of several persons dwelling together.

COLLIGENDUM BONA DEFUNCTI.—*See* AD COLLIGENDUM, &c.; GRANT.

COLLISION.—The violent coming together of two ships, causing damage to one or both. Cases of damage caused by the collision of ships form an important part of admiralty jurisdiction. These cases are subject to peculiar rules, regulating the

liability of the respective vessels and their owners, and the procedure to be adopted. Thus, if the collision be without fault of either party, each must bear his own loss; if it is caused by the negligence of both vessels, each party can only recover half his loss. (Wms. & B. Adm. 70; Maud & P. Mer. Sh. 451.) The result of the latter rule is, that if two vessels, A. and B., come into collision, both being to blame, causing loss or injury to A. to the extent of \$500, and to B. to the extent of \$1000, half the loss of A. would be deducted from half the loss of B., so that A. would pay B. \$250. *See* LIMITATION OF LIABILITY; NAVIGATION.

COLLISION, (defined). 4 Ind. 95.

—— (accidental, compensation for). 1 Abb. Adm. (U. S.) 73.

COLLISTRIGIUM.—A pillory.

COLLITIGANT.—One who litigates with another.

COLLOBIUM.—A hood or covering for the shoulders, formerly worn by serjeants-at-law.—*Spel. Gloss.*

COLLOCATION.—In the French law, the order in which creditors are placed and paid. *See* 2 Low. C. 9, 139.

COLLOQUIUM.—(1) A talking together; a conversation. (2) A term in pleading applied to the statement in a declaration for libel or slander, that the libellous or slanderous imputation had reference to the plaintiff. *See* INNUENDO.

COLLOQUIUM, (defined). 1 Den. (N. Y.) 347; 5 Johns. (N. Y.) 211, 430.

COLLUSION.—LATIN: *collusio*, from *colludere*, to play together.

§ 1. Generally.—Collusion is where two persons, apparently in a hostile position, or having conflicting interests, by arrangement do some act in order to injure a third person or deceive a court. Thus, where a person brought an action for penalties against a company by arrangement with them, for the purpose of protecting them against other actions by hostile persons for the same penalties, it was held that the judgment was obtained by collusion. (*Girdlestone v. Brighton Aquarium Co.*, 3 Ex. D. 137; 4 *Id.* 107.) The effect of collusion is to vitiate the transaction in which it is employed.

§ 2. **Affidavit of no collusion.**—In England, a person taking interpleader proceedings for his own protection is bound to make an affidavit that there is no collusion between him and either of the adverse claimants. *Manby v. Robinson*, 4 Ch. App. 347; Stat. 1 and 2 Will. IV. c. 58.

§ 3. **Divorce.**—In suits for dissolution of marriage, collusion was formerly used in the sense of connivance and conspiracy to commit the offence complained of; but it now means a conspiracy in presenting or prosecuting the suit, as where the respondent agrees with the petitioner to assist in obtaining a decree. Collusion is a bar to such a suit. *Browne Div.* 105. See **INTERVENTION**.

COLLUSION, (defined). 1 Wend. (N. Y.) 623. — (in mechanics' lien act). 83 N. Y. 281.

— (silence respecting the recording of deed, no proof of). 8 Pet. (U. S.) 38.

COLLYBISTA.—A money changer. See **ARGENTARIUS**.

COLLYBUM.—Exchange.

COLONUS.—A husbandman or villager, who was bound to pay yearly a certain tribute; or, at certain times in the year, to plough some part of the lord's land; hence the word "clown." —*Jacob*.

COLONY.—**LATIN:** *colo*, to cultivate.

A settlement in a foreign country possessed and cultivated, either wholly or partially, by immigrants and their descendants, who have a political connection with and subordination to the mother country, whence they emigrated. In other words, it is a place peopled from some more ancient city or country. Colonies are acquired either (1) by conquest, (2) by cession under treaty, (3) by occupancy, or (4) by hereditary descent. In the first two cases, the territory retains its former laws until they are altered by the home government. The alterations may be general or partial, leaving the old laws still in force touching matters unprovided for. In the third case (which is strictly a plantation), the laws of the home government, so far as they are applicable to the condition of an infant colony, are *ipso facto* in force in such colony, for there can be no existing laws to contest the superiority; and, besides, the occupants could not have any power to establish laws independently of the mother country, to whom their alle-

giance is still due; and they also carry with them the laws of their country, which are their inalienable birthright. Such a colony is, then, not subject to legislation by the mother country.—*Wharton*.

COLOR.—**LATIN:** *color*, a pretext. *Dirksen Man. Lat. s. v. § 2*; *Steph. Pl. Append. n. 40 et seq.*

§ 1. Color primarily signifies any appearance, pretext or pretence; thus, a person is said to have no color of title when he has not even a *prima facie* title. *Litt. § 400*.

§ 2. **In pleading.**—Color is an important term in the language of pleading. "It signifies an apparent or *prima facie* right, and the meaning of the rule that pleadings in confession and avoidance should give color is, that they should confess the matter adversely alleged to such an extent at least as to admit some apparent right in the opposite party, which requires to be encountered and avoided (*i. e.* deprived of its effect) by the allegation of new matter." (*Steph. Pl. (5 edit.) 233.*) Color is either implied or express.

§ 3. **Implied color.**—"Where to an action of assumpsit the defendant pleads in confession and avoidance that he did not promise within six years before the action brought, it is an absolute implied admission of the truth of the adverse allegation, that he had at one time made such promise as alleged, and that there is therefore an apparent right in the plaintiff, and this right is avoided by relying on the lapse of time." *Steph. Pl. (5 edit.) 234.*

§ 4. **Express color** (called in the old books "color" simply) is "a feigned matter, pleaded by the defendant in an action of trespass, from which the plaintiff seems to have a good cause of action, whereas he has in truth only an appearance or color of cause." (*Bac. Abr. Trespass, T. 4.*) Thus, if the defendant in an action of trespass *quare clausum fregit* wished to defend himself upon the ground that J. S., a third person, being seized in fee of the land in question, demised it to him for a term of years, he was not allowed to plead those facts simply, because they would amount to a denial of any title to possession whatever in the plaintiff, and for such a denial a traverse (*q. v.*) was the proper plea; but as it was frequently advantageous for the

defendant to set forth such facts in his plea, the old pleaders devised the expedient of "inserting in the plea a fictitious allegation of some colorable but insufficient title in the plaintiff, which they at the same time avoided by the preferable title of the defendant." (Steph. Pl. 241.) Thus, in the example given above, the defendant would plead the demise by J. S. to himself, and proceed to aver that the plaintiff claimed under another demise from J. S., and that it was inoperative; this was called "giving color," because it supplied the want of implied color.

COLOR, (person of, defined). 37 Miss. 209; 9 Ired. (N. C.) L. 384.

—— (person of, quadroon is). 29 Conn. 407.

—— (person of, not a competent witness). 8 Wheel. Am. C. L. 459.

COLOR AND PRETENCE, (in an indictment). 7 East 218, 223.

COLOR OF OFFICE.—An act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color.—*Plowd.* 64.

COLOR OF OFFICE, (defined). 28 N. Y. 318, 321.

—— (in a statute). 1 N. Y. 365, 367; 16 *Id.* 439, 442; 41 *Id.* 464, 469; 48 *Id.* 348, 357; 23 Wend. (N. Y.) 606, 608.

COLOR OF TITLE, (defined). 4 Dill. (U. S.) 555; 17 How. (U. S.) 601; 4 Sawyer (U. S.) 524; 6 Wall. (U. S.) 116; 33 Cal. 668; 9 Ga. 440; 19 *Id.* 8; 33 *Id.* 239; 17 Ill. 498; 30 Iowa 480.

—— (to land in Illinois). 11 Ill. 402; 15 *Id.* 178; 16 *Id.* 424; 17 *Id.* 253, 267; 18 *Id.* 502; 19 *Id.* 183, 376; 20 *Id.* 227, 397; 21 *Id.* 462; 23 *Id.* 49, 185, 387, 507; 24 *Id.* 577; 26 *Id.* 507, 522; 27 *Id.* 483; 30 *Id.* 279; 69 *Id.* 140.

—— (what constitutes). 6 Metc. (Mass.) 337; 29 Mo. 593; 60 *Id.* 420.

—— (what instrument will give). 4 Ga. 115, 120; 17 *Id.* 108; 30 Ill. 279, 325; *Id.* 392; 43 *Id.* 391; 6 Jones (N. C.) L. 159; 4 *Id.* 206; 1 Murph. (N. C.) 413; 2 *Id.* 14; 2 Tayl. (N. C.) 13; Peck. (Tenn.) 392.

—— (what instrument will not give). 25 Ga. 178; 62 Ill. 507; Spen. (N. J.) 487; 5 Ired. (N. C.) L. 711.

—— (what is meant by). 4 Sawy. (U. S.) 523.

—— (what is necessary to give). 3 Watts (Pa.) 345, 347.

COLORABLE.—That which is in appearance only and not in substance what it purports to be. Thus, where a person took a house, for which he paid

rates and taxes in a parish, for the purpose of obtaining a qualification for certain privileges given to the parishioners of that parish, it was held that his qualification was good and not colorable; but that if he had not really taken the house, "but only got somebody to put up his name over the door, or something of that kind, then it would have been colorable, and it would have been a sham." *Etherington v. Wilson*, L. R. 1 Ch. D. p. 166. Compare *Co. Litt.* 245a.

COLORABLE ALTERATION.—

An alteration made only for the purpose of evading the law (of copyright for instance).

COLORABLE IMITATION.—

As applied to trade-marks (*q. v.*), colorable imitation is such a close or ingenious imitation as to be calculated to deceive ordinary persons. *Wotherspoon v. Currie*, L. R. 5 H. L. at p. 519; *Lud. & Jenk.* 74.

COLORE OFFICII.—See COLOR OF OFFICE.

COLORE OFFICII, (defined). 2 Esp. Cas. 542.

—— (what is). 4 T. R. 485, 487.

—— (distinction between, and *virtute officii*). 5 Wend. (N. Y.) 265; 15 Johns. (N. Y.) 267; 4 N. Y. 173, 187.

—— (no officer has any right to extort bond under). 5 Pet. (U. S.) 115.

—— (right to sue). 1 Hall (N. Y.) 198.

—— (statutes as to taking securities). 2 Hill (N. Y.) 216.

—— (trustees irregularly elected, are in). 6 Cow. (N. Y.) 23, 25.

COLORED MEN, (defined). 31 Tex. 67.

—— (has no technical meaning). 31 Tex. 74.

COLORED PERSON.—A person of African descent, or negro blood.

COLPICES.—Young poles, which being cut down are made levers or lifters.—*Blount*.

COLT, (defined). Russ. & R. C. C. 416.

COMBARONES.—The fellow-barons or commonalty of the Cinque Ports.—*Cowell*.

COMBAT.—A formal trial of a doubtful cause or quarrel by the swords or bastons of two champions. The last trial by combat in England was *anno* 6 Car. 1, between Donald Lord Rey, appellant, and David Ramsey, esquire, defendant, both Scotchmen; but after many formalities the matter was referred to the king's will and pleasure.—*Termes de la Ley*. See BATTEL.

COMBATERRÆ.—A valley or piece of low ground between two hills.—*Kenn. Gloss.*

COMBINATION.—(1) A union together of persons or things; a union of persons for the purpose of committing an unlawful act. (2) In patent law, a union of parts of different existing machines.

COMBINATION OF WORKMEN.—The Stat. 22 Vict. c. 34, enacts, in explanation of the Stat. 6 Geo. IV. c. 129, that no workman, by reason merely of his combining with other workmen for the purpose of fixing the rate of wages, or for the purpose of peaceably, and without threat or intimidation, dissuading others from working with a view to fixing the rate of wages, shall be deemed or taken to be guilty of the offence of molestation or obstruction; but the act is not to authorize a workman to break his contract. See **TRADES UNIONS**.

COMBUSTIO.—Burning. In old English law, the punishment inflicted upon apostates.

COMBUSTIO DOMORUM.—House-burning; arson. 4 Bl. Com. 272.

COMBUSTIO PECUNIÆ.—The ancient method of testing mixed and corrupt money, paid into the exchequer, by melting it down.

COME AND DESCEND, (in a covenant). Dyer 101.

— (in a devise). 1 Cowp. 271, 273.

COME FROM THE PART OF THE FATHER, (in statute of descent). 1 Serg. & R. (Pa.) 222, 224.

COME TO, (in statute of descent). 1 Serg. & R. (Pa.) 222, 224.

COME TO SETTLE, (defined). 4 East 362, 366; 10 *Id.* 24, 29.

COMES.—A word used in an answer or plea to indicate the defendant's presence in court.

COMES.—(1) A count, or superior officer of a county. (2) An attendant, companion or follower.

COMFORT, (defined). 2 Keyes (N. Y.) 165.

COMFORT IN TREASON, (in constitution of U. S.). 2 Wheel. Cr. Cas. 22, 27.

COMFORTABLE MAINTENANCE, (in a will). 3 Cow. (N. Y.) 651.

COMFORTABLE SUPPORT AND MAINTENANCE, (in a bequest). 107 Mass. 474, 484; 1 Hart. (N. J.) 213; 4 Johns. (N. Y.) Ch. 9, 10.

COMING INTO POSSESSION, (what is). 3 Bro. Ch. C. 180, 186; 8 Com. Dig. 316.

COMINUS.—Hand-to-hand; in personal contact.

COMITAS.—Comity (*q. v.*)

COMITATU COMMISSO.—A writ or commission, whereby a sheriff is authorized to enter upon the charges of a county.—*Reg. Orig.* 295.

COMITATU ET CASTRO COMMISSO.—A writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff.—*Reg. Orig.* 295.

COMITATUS.—A county; a shire; an earldom; among the Saxons, the county court; a prince's retinue or followers.

COMITES.—Earls, courtiers, or companions; persons in the legation of a public minister.

COMITIA.—An assembly, either (1) of the Roman Curia, in which case it was called the *comitia curiata vel calata*; or (2) of the Roman centuries, in which case it was called the *comitia centuriata*; or (3) of the Roman tribes, in which case it was called the *comitia tributa*. Only patricians were members of the first *comitia*, and only plebians of the last; but the *comitia centuriata* comprised the entire populace, patricians and plebians both, and was the great legislative assembly passing the *leges*, properly so called, as the senate passed the *senatus consulta*, and the *comitia tributa* passed the *plebiscita*. Under the *Lex Hortensia*, 287 B. C., the *plebiscitum* acquired the force of a *lex*.—*Brown*.

COMITISSA.—A countess.

COMITIVA.—A companion or fellow-traveller; a troop or company of robbers.—*Jacob*

COMITY.—The comity of nations (*comitas gentium*) is that body of rules which States observe towards one another from courtesy or mutual convenience, although they do not form part of international law. (Holtz. Encycl. s. v.; Man. Int. Law 122.) It is the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. It is derived altogether from the voluntary consent of the latter; and it is inadmissible when it is contrary to its known policy or prejudicial to its interests. In the absence of any positive rule, affirming, or denying, or restraining, the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided. (Story Conf. L., § 38.)—*Wharton*.

COMMANDER, (who is a). 11 East 414, 425.

COMMANDERY.—A manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the "commander," who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. VIII. c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct.—*Jacob.*

COMMANDITE—COMMANDITAIRE.—A *société en commandite* in French law, is a partnership of which some of the members (the *associés commanditaires*) are mere lenders of capital to the firm, and are not responsible for any losses beyond the amount of their capital. (Teulet Codes, s. v.; Holtz. Encycl. s. v. *Commandit-Gesellschaft*.) The principle has been introduced into English law by the Partnership Act, 1865, and in mercantile language a person who advances money to a partnership under that act is called a "commanditaire." An attempt was also made by the Companies Act, 1867, to apply the principle of *sociétés en commandite* to English companies, but without success. See COMPANY.

COMMANDMENT.—Order, direction; also the offence of inducing another to transgress the law, or do anything contrary to it. The civilians call it *mandatum*.—*Wharton.*

COMMARCHIO.—A boundary; the confines of land.

COMMENCE A SUIT, (covenant to). 3 Wheel. Am. C. L. 212.

COMMENCED, (in policy of insurance). 26 Ohio St. 467.

— (when an action is). 14 East 539.

COMMENCEMENT.—

§ 1. **Of an action.**—The precise time at which an action is deemed to be commenced, is often of importance as bearing upon the questions whether the defendants are affected or bound by the proceedings already had; whether the statute of limitations has barred the claim sued upon; whether the jurisdiction of the court has so attached as to bar collateral impeachment of its action, &c.

§ 2. **Of a declaration.**—That part of the declaration which follows the venue and precedes the circumstantial statement of the cause of action. It formerly contained a statement of the names of the parties, and the character in which they

sued or were sued, if any other than their natural capacity; of the mode in which the defendant had been brought into court, and a brief statement of the form of action. In modern practice, however, in most cases, little else than the names and character of the parties is contained in the commencement.—*Bouvier.*

COMMENCEMENT OF A BUILDING, (in mechanics' lien law). 36 Md. 65; 45 Id. 389.

COMMENCEMENT OF A LAW, (no day named). 4 T. R. 660.

COMMENCEMENT OF A TERM, (in articles of marriage settlement). 1 P. Wms. 449, 452.

COMMENCEMENT OF ACTION, (what is, generally). 8 Iowa 309; 5 Bush (Ky.) 435; 2 Hun (N. Y.) 619; 5 Thomp. & C. (N. Y.) 176.

— (what is, under statute of limitations). 12 Ark. 94; 10 Id. 120, 479; 45 Cal. 125; 30 Ga. 873, 875; 1 Blackf. (Ind.) 379; 1 Ind. 276; 16 Iowa 59; 3 A. K. Marsh. (Ky.) 18; 7 Me. 370; 15 Mass. 455; 2 N. H. 36, 227; 5 Id. 225; 6 Id. 537; 47 Id. 24; 4 Cow. (N. Y.) 158; 5 Id. 519; 6 Id. 471; 17 Johns. (N. Y.) 65; 1 R. I. 17; 10 Tex. 155; 28 Id. 713; 42 Vt. 552.

COMMENCEMENT OF THE ACTION, (in a plea). 3 T. R. 186.

COMMENCEMENT OF PROSECUTION, (what is, under statute of limitations). 10 Iowa 309; 33 Mich. 112, 120; 6 Ired. (N. C.) L. 440; 1 Brev. (S. C.) 160; 15 Rich. (S. C.) 274.

COMMENCEMENT OF SUIT, (defined). 6 Wheel. Am. C. L. 485.

— (what is). 1 Root (Conn.) 486; 9 Iowa 178; 10 Id. 418; 2 N. H. 38, 227-229; 3 Harr. (N. J.) 172; 1 Cai. (N. Y.) 69, 72; 1 Cow. (N. Y.) 115, 116; 4 Id. 158, 161; 5 Id. 519, 526; 8 Id. 203, 205; 2 Johns. (N. Y.) 342, 345; 3 Id. 42; 15 Id. 323, 326; 18 Id. 14, 20; 3 Johns. (N. Y.) Cas. 145, 146, 150; 2 Hill (N. Y.) 598-601; 9 Wend. (N. Y.) 209-211; 6 W. Va. 336; Burr. 950, 959, 1243; Cowp. 454; Cro. Jac. 396, 397; Doug. 62; 14 East 539, 541; 1 Stra. 550, 736; 7 T. R. 6; 1 Wils. 141, 147.

— (what is not). 15 Wend. (N. Y.) 554, 555; 20 Id. 234, 235; 2 Wm. Bl. 781.

— (service of writ is). 2 Wheel. Am. C. L. 508; 4 Esp. 100.

— (what is, under statute of limitations). 19 Cal. 577; 21 Id. 352; 11 Ind. 48; 23 Miss. 60; 1 Johns. (N. Y.) 165; 5 Wend. (N. Y.) 63, 64; 11 Humph. (Tenn.) 303.

— (what is not, under statute of limitations). 34 Miss. 437; 30 Tex. 494.

— (what is, in a justice's court). 3 Cai. (N. Y.) 133; 7 Wend. (N. Y.) 121, 123.

COMMENDA.—In mercantile law, an association in which the capital and management of the property invested was intrusted to individuals. Troub. Lim. Part. ch. 3, § 27.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum a suprema potestate (Moore, 905): A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.

COMMENDAM.—A benefice or ecclesiastical living, which, being void, or to prevent its becoming void, is committed (*commendatur*) to the charge and care of some sufficient clerk, to be supplied until it may be conveniently provided with a pastor. Thus, formerly when a parson of a parish was made the bishop of a diocese, there was a cession of his benefice; but if the king gave him power to retain his benefice, he continued parson thereof, and was said to hold it in *commendam*. This was called a *commendam retinere*, as opposed to a *commendam capere*, which was where power was given to take a benefice in addition to one which the incumbent already had. Commendams were also divided with reference to their duration, into *semestris* (six months), *perpetua* (for life), and *limitata* (temporary). (Phillim. Ecc. L. 503 *et seq.*; 2 Steph. Com. 692; Colt and Glover v. Bishop of Coventry, Hob. 140.) Commendams were practically abolished by Stat. 6 and 7 Will. IV. c. 77, § 18, and the modern acts against pluralities, except in the rare instances in which pluralities (*q. v.*) are still allowed. Phillim. Ecc. L. 504.

COMMENDATION.—In feudal law, commendation was where an owner of land placed himself and his land under the protection of a lord, so as to constitute himself his vassal or feudal tenant. Commendation, and the grant of *beneficia* or feuds, were the two principal modes by which the feudal system was established. See 1 Stubbs Const. Hist. 153.

COMMENDATORS.—Secular persons upon whom, during popery times, ecclesiastical benefices were bestowed, in Scotland; called so, because the benefices were commended and entrusted to their supervision.—*Wharton*.

COMMENDATORY.—He who holds a church living or preferment in *commendam*.

COMMENDATORY LETTERS.—Letters written by one bishop to another on behalf of any of the clergy, or others of his diocese, travelling thither, that they may be received among the faithful; or that the clerk may be promoted; or necessities administered to others, &c.

COMMENDATUS.—One who lives under the protection of a great man.—*Spel Gloss*.

COMMERCE.—The intercourse of nations in each other's produce and manufactures, in which the superfluities of one are given for those of another, and then re-exchanged with other nations for mutual wants. There is a distinction between commerce and trade; the former relates to our dealings with foreign nations, colonies, &c.; the latter to mutual dealings at home. See COASTING TRADE.

COMMERCE, (defined). 7 How. (U. S.) 392; 1 Otto (U. S.) 275; 3 Wall. (U. S.) 407, 417;

9 Wheat. (U. S.) 190, 229; 14 Ga. 438; 4 Den. (N. Y.) 469; 14 Wend. (N. Y.) 9, 15.

COMMERCE, (distinguished from "trade"). 14 Wend. (N. Y.) 9, 15.

— (distinguished from "transportation"). 45 Iowa 338.

— (power of congress to regulate). 7 How. (U. S.) 283; 1 Otto (U. S.) 275; 9 Wheat. (U. S.) 1.

— (includes "navigation" as well as "traffic"). 3 Cliff. (U. S.) 347; 9 Wheat. (U. S.) 1.

— (includes "passenger traffic"). 34 Cal. 492.

— (includes "telegraphing"). 5 Nev. 102.

— (does not include "internal traffic"). 36 Ind. 267.

COMMERCE AMONG THE SEVERAL STATES, (in U. S. constitution). 15 Pet. (U. S.) 511; 3 Cow. (N. Y.) 713, 735, 744, 748.

COMMERCE—NAVIGATION, (State laws must yield to acts of congress). 9 Wheat. (U. S.) 1.

COMMERCE; TRANSPORTATION, (in a statute). 45 Iowa 338.

COMMERCE OR TRADE, (prohibited to banks). 8 Wheat. (U. S.) 349; 7 Mass. 433.

COMMERCIA BELL.—(1) Conventions or compacts made between belligerents for the purpose of securing a temporary peace or cessation of hostilities. (1 Kent Com. 159.) (2) Contracts between citizens of hostile States, made in time of war. 1 Kent Com. 104.

COMMERCIAL BROKERS, (who are not, in U. S. internal revenue laws). 23 Wall. (U. S.) 321, 331.

COMMERCIAL CORPORATION, (what constitutes). 3 Cliff. (U. S.) 347.

COMMERCIAL LAW.—The law by which the commerce of nations is regulated. The word "commercial" here so far implies intercourse by sea, or by means of shipping, as to be constantly used almost as the synonym of "maritime." (3 Kent Com. 1–21.)—*Burrill*. See MARITIME LAW.

COMMERCIAL PAPER.—See BANKRUPTCY, § 3, (8); BILL OF EXCHANGE; NEGOTIABLE; PROMISSORY NOTE.

COMMERCIAL PAPER, (defined). 5 Biss. (U. S.) 113.

— (what included). 3 Bankr. Reg. 230; 6 Id. 338; 2 Dill. (U. S.) 533; 1 Low. (U. S.) 478; 4 Id. 213.

— (note given by merchant is). 5 Biss. (U. S.) 113.

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum (3 Inst. 181): Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.

COMMISSARIAT.—The whole body of officers in the commissaries' department of an army.

COMMISSARY.—

§ 1. In ecclesiastical law.—An officer who exercises jurisdiction "in places of the diocese so far from the chief city that the chancellor cannot call the people to the bishop's principal consistory court without great trouble to them." Phillim. Ecc. L. 1215. See DIOCESAN COURTS.

§ 2. In military law.—An officer having in charge the supplying an army, or body of troops, with provisions.

COMMISSION.—LATIN: *commissio*, from *committere*, to commit or entrust.

An order or authority to do some act.

§ 1. In the law of contracts and agency a commission is an authority to an agent to enter into a contract, especially one for the sale or purchase of goods; such a commission generally includes an engagement by the principal to remunerate the agent, and hence commission is sometimes used to denote the remuneration paid to an agent. Chit. Cont. 512; Sm. Merc. L. 122. See COMMISSIONS.

§ 2. *Del credere*.—A *del credere* commission is an authority to an agent to negotiate sales of goods on behalf of his principal, the latter engaging to pay him a higher remuneration than usual in consideration of his guaranteeing the payment of the price by the persons to whom he may sell them. Sm. Merc. L. 119.

§ 3. To officer.—(1) An authority given by the government, a court, or the like, to a person or persons to do some act, especially to inquire into certain facts. When the commission creates a permanent office it is generally known by the description of the commissioners—such as the "Charity Commissioners," "Railway Commissioners," &c. (See the various titles.) (2) The instrument or certificate of an officer's appointment.

COMMISSION, (defined). 4 Barn. & C. 850, 854.

— (of officer). 7 Wheel. Am. C. L. 144.

— (of officer, imports a writing). 6 Pet. (U. S.) 352, 365.

— (is evidence of an appointment). 1 Cranch (U. S.) 137, 159.

COMMISSION DAY.—The opening day of the assizes at a particular town. See ASSIZE, § 2.

COMMISSION DEL CREDERE.—See COMMISSION, § 2.

COMMISSION MERCHANT.—A factor is commonly said to be an agent employed to sell goods or merchandise, consigned or delivered to him by or for his principal for a compensation commonly called "factorage" or "commission." Hence he is often called a "commission merchant" or "consignee;" and the goods received by him for sale are called a "consignment." Story Ag. 28.

COMMISSION MERCHANT, (defined). 50 Ala. 154.

— (may maintain an action of replevin). 2 Hill (N. Y.) 147, 150.

— (right of, to insure goods). 1 Hall (N. Y.) 84, 101; 4 Paige (N. Y.) 17, 19.

COMMISSION OF APPRAISEMENT AND SALE.—Where property has been arrested in an admiralty action *in rem* and ordered by the court to be sold, the order is carried out by a commission of appraisement and sale; in some cases (as where the property is to be released on bail and the value is disputed) a commission of appraisement only is required. The commission of appraisement is directed to the marshal and commands him to reduce into writing an inventory of the property, to choose one or more experienced persons, to swear them to appraise the property according to its true value, and to file a certificate of the value signed by himself and the appraisers. (Wms. & B. Adm. 206, 225, 232.) The commission of sale (which is generally added to the commission of appraisement, though it may be separate) commands the marshal to sell the property by public auction for not less than the appraised price, and to pay the proceeds into the registry. *Id.* 236.

COMMISSION OF ARRAY.—This commission was issued to send into every county in England, officers to muster or set in military order the inhabitants. The introduction of commissions of lieutenantancy, which contained in substance the same powers as these commissions, superseded them. 2 Steph. Com. (7 edit.) 585.

COMMISSION OF ASSIZE.—Commissions of assize are those issued to judges of the High Court or Court of Appeal, or to serjeants-at-law and queen's counsel, authorizing them to sit at the assizes for the trial of civil actions. See ASSIZE, § 2; NISI PRIUS.

COMMISSION OF BANKRUPT.—A commission or authority formerly granted by the lord chancellor to such discreet persons as he should think proper, to examine the bankrupt in all matters relating to his trade and effects, and to perform various other important duties connected with bankruptcy matters; these persons were thence called "commissioners of bankruptcy," and had in most respects the pow-

ers and privileges of judges in their own courts. But regularly constituted courts and judges in bankruptcy have now superseded such commissions and commissioners.—*Brown*.

COMMISSION OF CHARITABLE USES.—This commission issues out of Chancery to the bishop and others, where lands given to charitable uses are misemployed, or there is any fraud or dispute concerning them, to inquire of and redress the same, &c. (43 Eliz. c. 4.)—*Wharton*.

COMMISSION OF DELEGATES.—When any sentence was given in any ecclesiastical cause by the archbishop, this commission, under the great seal, was directed to certain persons, usually lords, bishops, and judges of the law, to sit and hear an appeal of the same to the king, in the Court of Chancery. But latterly, the judicial committee of the Privy Council has supplied the place of this commission.—*Brown*.

COMMISSION OF GAOL DELIVERY.—*See* GAOL DELIVERY.

COMMISSION OF LUNACY.—A commission issuing out of Chancery, or other court having the requisite jurisdiction, requiring the person or persons to whom it is directed, to inquire concerning the state of mind of the alleged lunatic, and to certify the result by inquisition (*q. v.*) Although such special commissions may still be issued in England, if the lord chancellor thinks fit, it is provided by the Lunacy Regulation Act, 1853, § 39, that a general commission may be issued, directed to the masters in lunacy by name, and authorizing them to inquire in each case of alleged lunacy referred to them by the lord chancellor, in the same manner as if a commission had issued specially in the case; this has practically superseded special commissions. (Pope Lun. 43. *See* MASTERS IN LUNACY.) As to the permanent commissioners in lunacy, *see* that title.

COMMISSION OF OYER AND TERMINER.—*See* OYER AND TERMINER.

COMMISSION OF PARTITION.—Formerly a partition was effected in England by issuing a commission to commissioners, to divide the property, and, on their return coming in, the parties were ordered to execute mutual conveyances to carry out the division. (Haynes Eq. 153.) Similar commissions are still issued in some of the States. *See* PARTITION.

COMMISSION OF THE PEACE.—A commission by which the crown appoints (or technically "assigns") a number of persons to act as justices of the peace (*q. v.*) within a

certain district. The ordinary commission to justices contains two assignments or appointments. By the first, the general power of preserving the peace is given to the justices jointly and severally; by the second, power to hold sessions (*q. v.*) is given to all the justices, and to every two or more of them, of whom (in the original Latin *quorum*) one of certain named justices must be one. (Pritch. Quar. Sess. 3 *et seq.*) At the present day it is usual to include all the justices in the *quorum* clause, and consequently any two justices may hold a quarter sessions. *Id.* 12.

COMMISSION OF REBELLION.—This was the old method of compelling a defendant to a suit in Chancery to appear and answer the bill. It authorized the commissioners to attach, *i. e.* arrest him. The process was abolished in 1841. 3 Bl. Com. 444, and notes.

COMMISSION OF REVIEW.—Same as the commission of delegates (*q. v.*)

COMMISSION OF SEQUESTRATION.—*See* SEQUESTRATION.

COMMISSION OF TREATY WITH FOREIGN PRINCES.—Leagues and arrangements made between States and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance.—*Wharton*.

COMMISSION OF UNLIVERY.—In an action in the English Admiralty Division, where it is necessary to have the cargo in a ship unladen in order to have it appraised, a commission of unlivery is issued (Wms. & B. Adm. 233,) and executed by the marshal. *Id.* 234, *n.* (m).

COMMISSION TO TAKE ANSWERS IN EQUITY.—When a defendant in a suit lived more than twenty miles from London, there might have been a commission granted to take his answer in the country, where the commissioners administered to him the usual oath, and then the answer being sealed up, either one of the commissioners carried it up to court, or it was sent by a messenger, who swore that he received it from one of the commissioners, and that the same had not been opened or altered since he received it. But latterly such an answer might be sworn in the country before any solicitor of the court who had been appointed a commissioner to administer oaths in Chancery. The present answer in Chancery (and at common law) is a mere affidavit, and is not a pleading: it is sworn anywhere before a solicitor who is a commissioner to administer oaths.—*Brown*.

COMMISSION TO TAKE TESTIMONY.—When a person whose evidence is required in a cause is out of the jurisdiction, or too aged and infirm to attend court, a commission is issued authorizing a person or persons therein named to take his evidence, on oath,

either by interrogatories or *vivâ voce*, or by both methods, and the depositions are read at the trial. Archb. Pr. 309; Sm. Ac. 95. See EXAMINER; MANDAMUS.

COMMISSIONER.—A person to whom a commission is directed by the government, or a court, &c.*

COMMISSIONER, (to affidavit). 2 Cow. (N. Y.) 552, 568.

—— (to distribute stock). Hopk. (N. Y.) 587; 4 Paige (N. Y.) 229, 245.

—— (to report facts and evidence). 102 Mass. 482.

COMMISSIONERS OF BAIL.—Officers sometimes appointed by courts

to admit to bail persons arrested in civil actions.

COMMISSIONERS OF CIRCUIT COURTS.—Officers appointed by the United States circuit courts to assist in the administration of justice. Their principal duties are to take bail and affidavits, to conduct preliminary examinations in criminal cases in which the United States government is interested, and in proceedings for extradition to foreign countries.

COMMISSIONERS OF DEEDS.—Officers empowered, in many of the States, to take acknowledgments, administer oaths, &c. They have, for the most

* The following are the most important classes of commissioners at present existing in England:

Commissioners for taking acknowledgments of married women are either special—i. e. appointed for taking the acknowledgments in a particular case (as where the married woman is abroad)—or perpetual. Stats. 3 and 4 Will. IV. c. 74, § 81 *et seq.*; 23 and 24 Vict. c. 127, § 30; Shelf. R. P. Stat. 384.

Commissioners in bankruptcy.—Formerly the jurisdiction over bankrupts' persons and estates was exercised by commissioners appointed by a commission issued by the lord chancellor under the great seal in each case, the lord chancellor exercising superintendence over the proceedings. (Robts. Bankr. 2.) By Stat. 1 and 2 Will. IV. c. 56, a court of bankruptcy consisting of four judges (exercising as a court of review the jurisdiction previously exercised by the lord chancellor) and six commissioners (who were permanent officials) was constituted; country commissioners were also appointed from time to time. The proceedings in each case were commenced by a fiat, called a London or a country fiat, according to circumstances, and issued out of chancery instead of by a commission. (Robts. Bankr. 4.) By Stat. 5 and 6 Vict. c. 122, permanent district commissioners, attached to district courts in the country, were appointed. (*Id.* 6.) Commissioners in bankruptcy were abolished by the Bankruptcy Act, 1869. §§ 128, 130.

Commissioners in lunacy are officers appointed under Stat. 8 and 9 Vict. c. 100. They have the control of lunatic asylums and of houses licensed for the reception of lunatics, which they are required to visit periodically, but they have no jurisdiction over the property or persons of lunatics, nor have they anything to do with lunatics so found by inquisition, unless confined in an asylum or licensed house. Second Rep. of Legal Dep. Comm. 60; Pope Lun. 37; Stat. 8 and 9 Vict. c. 100; 16 and 17 Vict. cc. 96, 97; 18 and 19 Vict. c. 105; 25 and 26 Vict. c. 111.

Commissioners of inland revenue have for their functions to superintend the collection of the internal taxes (as opposed to the customs or frontier duties), such as the land tax, the income tax, succession and legacy duties, and stamp duties. (Dow. St. L. 4, 5. Their offices are in

Somerset House. The commissioners of inland revenue are the result of the consolidation, in 1849, of the commissioners of stamps and taxes with the commissioners of excise. *Id.* 119.

Commissioners of patents investigate applications for patents, have the letters-patent prepared, and issue their warrant for having them sealed with the great seal; they also keep the register of patents and assignments (Stat. 15 and 16 Vict. c. 83), and have the superintendence of the registry of trade-marks. (Stat. 38 and 39 Vict. c. 91.) The commissioners themselves are high judicial officers, and all the routine work is performed by clerks.

Commissioners of woods, &c.—The commissioners of woods, forests and land revenues, and of works and public buildings, are two boards appointed for the superintendence of the public property indicated by their titles, which includes the royal parks in and near London and the other royal demesnes given up by the crown on the settlement of the civil list. Stat. 14 and 15 Vict. c. 42; 15 and 16 Vict. c. 62; 16 and 17 Vict. c. 56, and numerous other acts down to 36 and 37 Vict. c. 36; 2 Steph. Com. 535.

Commissioners to administer oaths are solicitors appointed to administer oaths to persons making affidavits before them. Formerly they were appointed under various acts of parliament according to the court in which the affidavit was to be used (Stat. 29 C. II. c. 5; 16 and 17 Vict. c. 78; Dan. Ch. Pr. 646; Archb. Pr. 15, 1299. As to commissioners in Scotland and Ireland, see 3 and 4 Will. IV. c. 42, § 42; Isle of Man and Channel Islands, 22 Vict. c. 16), but now all such commissioners may administer oaths in all causes and matters pending in the Supreme Court (Jud. Act, 1873, § 82), and in future all commissioners for this purpose will be appointed by the lord chancellor under the Judicature Act. (§ 84.) Commissioners for taking oaths in the Supreme Court may also take oaths in the ecclesiastical courts. (Stat. 40 and 41 Vict. c. 25, § 18.) A commissioner must not administer an oath to a person for whom he is acting as solicitor or agent. Archb. Pr. 1299; Dan. Ch. Pr. 651, n.; Duke of Northumberland v. Todd, 7 Ch. D. 777.

part, all the powers of a notary public (*q. v.*), except that of protesting negotiable paper.

COMMISSIONERS OF HIGHWAYS.—Officers appointed in each county, or township, in many of the States, with power to take charge of the altering, opening, repair and vacating of highways within such county or township. Three commissioners usually form what is styled the "Board of Commissioners of Highways."

COMMISSIONER OF PATENTS.—The head of the bureau of the patent office. See PATENTS; PATENT OFFICE.

COMMISSIONERS OF SEWERS.—Commissioners appointed from time to time, in some of the States, to remove obstructions in creeks and rivers, and to regulate the flow of the water. See SEWERS.

COMMISSIONS.—Compensation, generally a percentage on the amount paid out or received, allowed to agents, factors, executors, trustees, receivers, and other persons who manage the affairs of others, in recompense for their services.—*Bouvier*.

COMMISSORIA LEX.—The term applied to a clause often inserted in conditions of sale, by which a vendor reserved to himself the privilege of rescinding the sale, if the purchaser did not pay his purchase money at the time agreed on. (Dig. 18, tit. 3.)—*Wharton*.

COMMIT—COMMITMENT—COMMITTAL.—

§ 1. A person is committed to prison when he is sent there by a court or judge, generally for a short period or for a temporary purpose. The order of the magistrate committing such person to prison, is called the "commitment," or "*mittimus*" (*q. v.*)

§ 2. **Committing for trial.**—In criminal law, when a person is accused of an indictable offence, the magistrate before whom he is examined, after hearing the evidence of witnesses, is bound either to discharge the accused or to commit him to prison to take his trial (commonly called "committing him for trial"), unless it is a bailable offence, in which case he may be admitted to bail (*q. v.*) This imprisonment is only for safe custody and not for punishment. (4 Steph. Com. 354.) The next step is the indictment (*q. v.*)

§ 3. **Final commitment.**—So, also, after a trial and conviction, the order or warrant to the sheriff, to carry out the sentence of imprisonment, by delivering the convict at the jail, is called the "final commitment."

§ 4. **Committal for contempt, or for judgment debt.**—In civil proceedings, the principal instances of committal are those for punishment of contempt of court (see CONTEMPT), and, in England, for non-payment of a judgment debt, under the Debtors' Act, 1869 (*q. v.*) In the latter class of cases the first step, in the practice of the common law divisions of the High Court, is to obtain a committal summons, calling on the judgment debtor to show cause before a judge at chambers, why, in default of payment, he should not be committed to prison, and on default, if the case is one to which the statute applies, the committal order is made, on which the debtor is arrested and imprisoned. 2 Sm. Act. 284 *et seq.*, 515; Coe Pr. 159. In the Chancery Division the application is made by motion. Dan. Ch. Pr. 928. See ATTACHMENT.

COMMIT, (power of the legislature). 14 East 1.

COMMIT SUICIDE, (in a life policy). 102 Mass. 230; 3 C. B. 437, 477.

COMMITMENT IN EXECUTION, (what is not). 7 Barn. & C. 669, 672.

COMMITMENT OF A PAUPER, (in a statute). 9 Cush. 585.

COMMITMENT TO PRISON, (by congress). 6 Wheat. (U. S.) 204.

— (is a commitment to the keeper of the prison). 1 Ld. Raym. 424.

COMMITTEE.—

§ 1. **In lunacy.**—In lunacy practice, a committee is a person to whom the custody of the person or the estate of a lunatic, habitual drunkard, or spendthrift is committed or granted by the court. The same person may be committee of the person and of the estate, or the two offices may be vested in two different persons, or either office may be vested in two or more persons, called "joint committees." The committee represents the lunatic, (Vin. Abr. "Lunatick;" 2 Sch. & Lef. 439,) but acts under the direction of the court having jurisdiction in the matter, in much the same manner as guardians and trustees or executors act in an administration, the committee of the person being responsible for the comfort and well being of the luna-

tic, and the committee of the estate being responsible for its proper management. *Elm. Pr. Lun. passim*; *Pope Lun.* 92.

§ 2. In parliamentary practice, a committee is a sitting of one of the houses of a legislative body, or of a number of its members, for considering questions of detail; hence, committees are distinguished as "committees of the whole house" (*May Parl. L.* 392), and "select committees," consisting of certain members appointed by the house, or the presiding officer, to inquire into and report on a particular matter for the information of the house (*Id.* 408), especially such matters as involve the examination of witnesses, *e. g.* a private bill (*Id.* 414), or an inquiry into an alleged public abuse, or the like.

§ 3. The principal function of committees of the whole house, is to consider bills which have been read a second time, and to amend them, where necessary. (*May Parl. L.* 500 *et seq.*) In the House of Commons two committees of the whole house also sit at intervals throughout the session; one (called the "committee of supply") for the purpose of considering how much money is required for the public expenditure; the other (called "the committee of ways and means") for providing that money, by sanctioning the imposition of taxes and the application of public revenues. (*Id.* 616.) The recommendations of the latter are carried into effect by the Annual Appropriation Act. *Id.* 637. See APPROPRIATION, § 6.

§ 4. There are also committees nominated for purposes of parliamentary business, *e. g.* the committee of selection, appointed by the House of Commons to classify private bills and arrange for their consideration by select committees. (*May Parl. L.* 745.) A bill is sometimes referred to what is called a "hybrid committee," consisting partly of members nominated by the house, and partly of members nominated by the committee of selection. *Id.* 811. See BILLS, § 1.

§ 5. Of inspection.—A number of persons, not exceeding five, chosen by the creditors in a bankruptcy, in England, from among their own body, for the purpose of superintending the administration by the trustee of the bankrupt's property, (*Bankr. Act, 1869, §§ 14, 125*), auditing his accounts, &c. (*Id.* § 20.) There are certain things which the trustee can only do with the sanction of the committee of inspection, such as mortgaging the bankrupt's property to raise money for the payment of his debts. *Id.* § 27.

COMMITTEE, A, (bond to). 3 *Day (Conn.)* 450, 464.

—— (contract by). 21 *Wend. (N. Y.)* 101-2.

COMMITTEE, AS, (contracting). 7 *Cranch (U. S.)* 299, 304; 9 *Johns. (N. Y.)* 334; 19 *Johns. (N. Y.)* 60, 63.

—— (signing agreement). 2 *Wheat. (U. S.)* 56 n.

COMMITTITUR PIECE.—An instrument in writing, on parchment or paper, which charges a person already in prison, in execution, at the suit of the person who arrested him.—*Wharton.*

COMMIXTIO—COMMIXTION.—A civil law term, signifying the mixing together or confusion of things, dry or solid, belonging to different owners, as distinguished from *confusio*, which has relation to liquids. See CONFUSION OF GOODS.

COMMODATE.—In the Scotch law, a gratuitous loan for use. *Ersk. Inst. b. 3, t. 1, § 20.*

COMMODATI ACTIO.—See ACTIO COMMODATI.

COMMODATO.—In Spanish law, a contract by which one person lends gratuitously to another some object not consumable, to be restored to him in kind at a given period.—*Bouvier.*

COMMODATUM.—He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called *commodans*; the person who receives the thing is called *commodatarius*, and the contract is called *commodatum*. See BAILEE, § 2.

COMMODITIES.—Goods, wares and merchandise of any kind; movables; any personal thing capable of being traded or sold.

COMMODITIES, (defined). 6 *Wall. (U. S.)* 611; 12 *Mass.* 256; 29 *How. (N. Y.) Pr.* 489.

—— (as a convenience for transacting business). 123 *Mass.* 493.

—— (in a statute). *Litt. (Ky.) Sel. Cas.* 409.

—— (in excise law). 6 *Wall. (U. S.)* 611, 625; 12 *Mass.* 252, 256.

—— (in a prohibitory statute, defined). *Litt. (Ky.) Sel. Cas.* 409.

—— (in U. S. revenue laws). 29 *How. (N. Y.) Pr.* 489.

—— (in constitution of Mass. concerning taxes). 5 *Allen (Mass.)* 431; 12 *Id.* 500; 12 *Mass.* 255; 123 *Id.* 495.

Commodum ex injuria sua nemo habere debet (*Jenk. Cent.* 161): No person ought to have advantage from his own wrong.

COMMON.—

§ 1. In general.—In the technical sense of the word, a common (or right of common) is the right of taking some part of any natural product of the land or water belonging to another man in common with him. Therefore, the right to take the whole of the product, or to exclude the owner from taking it, is not a common—though sometimes called a sole common—but an estate in land: "For it is against the nature of this word common, and it was implied in the first

grant that the owner of the soil should take his reasonable profit there." (Co. Litt. 122a.) Hence, also, a right of common cannot be claimed by custom, because, the number of claimants under a custom being indefinite, the subject of the right would be liable to be entirely destroyed. (Wms. Comm. 194; Shelf. R. P. Stat. 30.) The only exception to this rule occurs in the case of copyholders, who may claim a right of common against their lord by virtue of a custom in the manor. The reason of this is, that copyholders are but tenants at will to their lord, and therefore cannot claim by prescription, except in his name; as they could not claim a right in his name against himself, they would not be able to claim at all if they were not allowed to claim under a custom. (Wms. Comm. 17; Elt. Copyh. 215.) Most rights of common may be created by grant at the present day, or may be claimed by prescription. See APPENDANT; APPURTENANT; LOST GRANT; PRESCRIPTION.

§ 2. A common is an incorporeal hereditament, and a species of profit à prendre. See HEREDITAMENT; PROFIT.

§ 3. A person having a right of common is called a "commoner." See COMMONABLE.

§ 4. Common of pasture.—Commons are of four principal kinds, viz., common of pasture, of estovers, of turbary, of piscary; the remaining rights are generally classed together as miscellaneous. Common of pasture is the right of feeding one's beasts upon another's land; the most usual instances of this are: the right of the tenants of a manor to pasture their beasts on the waste, woodlands, &c., of the manor; the right of pasture over royal forests possessed by persons owning land within the forest (Commissioners of Sewers v. Glasse, L. R. 19 Eq. 134; Cooke Incl. 45), and the reciprocal rights of pasture possessed by owners of shack-lands, lammas-lands, lot-meadows, &c. (Cooke Incl. 42; *infra* § 7, and COMMONABLE, § 2.) But any owner of land in fee-simple may grant to another person the right of pasturing animals on his land, and the right of common so created may be either appurtenant or in gross. Wms. Comm. 168, 184.

§ 5. Appendant.—Common of pasture is either appendant, appurtenant, because of vicinage, or in gross. (Co. Litt. 122a.) Common of pasture appendant is the right which every freehold tenant of a manor possesses to feed his cattle used in agriculture (*i. e.* horses, cattle and sheep) upon the lord's waste, provided they are *levant* and *couchant* on the tenant's freehold land. It is said to exist "of common right," because (as it is usually put) on every original feoffment of arable land to be held of the manor in socage, the law, without express words, presumed a grant of sufficient pasture in the waste for the beasts *levant* and *couchant* on the land. The more correct view appears to be that the right of common appendant is traceable to the village communities or vills which existed in England at the time of the conquest. The right of common appendant cannot be created since *quia emptores*, that statute having prohibited the creation of new manors, and the land to which such a right is appendant must originally have

been arable. Wms. Comm. 31; Wms. Real Prop. Append. (c); Elt. Com. 47. See APPENDANT; LEVANT AND COUCHANT.

§ 6. Appurtenant.—Common of pasture appurtenant is a right annexed to certain lands, by virtue of which the owner of those lands feeds cattle on the soil of another person (Cooke Incl. 19; Wms. Comm. 168); it differs from the right of common appendant (*supra* § 5) in all the characteristics which arise from the connection of the latter with the socage tenure of ancient arable land in a manor (Elt. Com. 62); it may, therefore, be held by copyholders or strangers to a manor, and may arise by grant or prescription since *quia emptores*, and is not necessarily confined to commonable beasts. Co. Litt. 122a. See COMMONABLE, § 1.

§ 7. Simple—Reciprocal—Alternate.—Common of pasture appurtenant may be either simple or reciprocal: the former occurs where the owner of the waste has no pasture over the tenant's land in return, the latter where neighbors have a mutual right of turning out cattle to feed on each other's land. The simple right is usually exercised upon the waste of a manor by the tenants, and strangers who can show a grant or prescribe; these may be either individual land-owners in the neighborhood, or a whole body of tenants within an adjoining lordship. The reciprocal right is found in shack-fields, and open meadows or common fields, which at certain seasons are open to the cattle of all the proprietors of allotments. Such a right may also be alternate as well as reciprocal, (Elt. Com. 65; Wms. Comm. 57,) as if one township has common in another during one season, and the second has common in the first during the next, and so on. Anon., 1 Dyer 47 b.

§ 8. Pur cause de vicinage.—Common because of vicinage ("pur cause de vicinage," *causa vicinagii*) is where the tenants of two adjoining manors, the inhabitants of two adjoining townships, or the owners of two contiguous pieces of land, (see Jones v. Robin, 10 Ad. & E. (N. S.) 620,) have from time immemorial "intercommoned," *i. e.* allowed each other's cattle to stray and pasture on each other's land, or on a waste or open field lying between their lands. The reason for which this kind of common is allowed in law to exist is to avoid the disputes which would arise on both sides if actions could be brought for trespass, or if distress damage feasant could be made whenever the cattle of one person stray over the undivided land of the other. (Elt. Com. 71; Tyrringham's Case, 4 Co. 37.) Consequently either party may put a stop to it by inclosing his land. (Co. Litt. 122a.) The chief difference between this and the other kinds of common is, that a commoner "pur cause de vicinage" may not put his beasts into another's land, but must first put them into his own land, and then the beasts may well stray and go into the other common without being distrained. Anon., 1 Dyer 47 b. For the other differences, see Elt. Com. 72; Cooke Incl. 29; Commissioners of Sewers v. Glasse, L. R. 19 Eq. at p. 159.

§ 9. In gross.—Common of pasture in gross differs from the foregoing varieties of common, in being unconnected in any way with the tenure or occupation of land. It may be

created either (1) by the owner of a common appurtenant for a fixed number of cattle alienating the common without the tenement to which it belongs, or (2) by the owner of land granting to another man and his heirs the right to put beasts on the land of the grantor, with or without restrictions as to number and time of year. It is also said, that a common in gross may be claimed by prescription in respect of mere inheritance. Wms. Com. 184. See **PRESCRIPTION**.

§ 10. **Certainty**.—Common appendant, appurtenant, and in gross, are either certain by number, *i. e.* for a certain number of beasts, or certain by levancy and couchancy (*q. v.*) or *sans nombre* (*q. v.*) Co. Litt. 122 a.

The following rights of common differ from common of pasture, in being limited to those parts of the land where the product is found, while common of pasture extends to every place across which the cattle may wander in search of food, although there may be no pasture there (Elt. Com. 229):

§ 11. **Common of estovers**.—The right of taking from the woods or waste lands of another person a reasonable portion of his timber or underwood, for use in the commoner's tenement. As to the different kinds of estovers, see **ESTOVERS**. Common of estovers is either appurtenant, *i. e.* annexed to land, or in gross, *i. e.* existing independently of land. Elt. Com. 82, where it is shown that there is no such thing as common of estovers appendant. Cooke Incl. 34. See *supra* §§ 6, 9; and **APPURTENANT**; **IN GROSS**.

§ 12. Another species of common, often included under common of estovers, is the right to take for use on the commoner's tenement part of the wild herbage and brushwood (such as heath, furze, broom, fern, rushes, and, in some manors, hay) from the land of another. Elt. Com. 117.

§ 13. **Common of turbary**.—Common of turbary in its modern sense is the right of taking peat or turf from the waste land of another, for fuel in the commoner's house. (2 Bl. Com. 35; Wms. Com. 187.) It appears that formerly a distinction was drawn between peats (*turbæ*) from a peat-moss or boggy ground, and "flags" (French *blèches*, Latin *blestix*) or turfs pared from the surface, and that strictly speaking, common of turbary does not give a right to take "flags," that being destructive of the pasture. (Elt. Com. 96.) The right is, however, unimportant at the present day; it is analogous to common of estovers, and is therefore either appurtenant or in gross, but not appendant. *Id.* 99.

§ 14. **Common of piscary**.—As to common of piscary, see **FISHERY**.

§ 15. **Common of digging**.—Common of digging or common in the soil, is the right to take for one's own use part of the soil or minerals in another's land; the most usual subjects of the right are sand, gravel, stones, and clay. It is of a very similar nature to common of estovers and of turbary. Elt. Com. 109. *Supra* §§ 11, 13; and see **DOLE**; **TINBOUNDING**.

§ 16. **Common of fowling**.—In some parts of the country a right of taking wild animals (such as conies or wildfowl) from the land

of another, has been found to exist; in the case of wildfowl, it is called a "common of fowling" (Elt. Com. 118.) As to apportionment of commons, see **APPORION**, § 5. See, also, **LEVANCY** AND **COUCHANCY**; **PAWNAGE**; **SANS NOMBRE**; **SURCHARGE**.

§ 17. Common is sometimes used to denote certain rights which resemble rights of common in the strict sense (*supra* § 1), in giving a person the right of taking the profits of land in common with others, but nevertheless differ from rights of common in some essential point. Thus, the right of the lord of a manor to take profits from the waste of the manor, in common with the tenants, is not strictly a right of common, because the waste is vested in him, and no one can have common in his own land. Elt. Com. 8; Cooke Incl. 56. See **PASTURE**; **SEIGNORY**.

§ 18. So cattle-gates or stints, the rights of pasture of the inhabitants of a parish, or other similar class, over lammas-lands, &c., are not rights of common, though frequently so called, but shares in the vesture of land, and therefore corporeal hereditaments. Elt. Com. 31, *n. (d)*.

§ 19. Common also signifies a piece of land subject to rights of common. As to the enclosure and regulation of commons under the Commons Acts, see **INCLOSURE**.

COMMON, (definition of). 10 Wend. (N. Y.) 639, 648.

—— (right of, defined). Co. Litt. 142 a.

—— (imports frequent). 112 Mass. 286.

—— (of fishery, defined). 8 Taunt. 183, 187.

—— (as applied to schools, defined). 13 Barb. (N. Y.) 400, 410.

COMMON AND NOTORIOUS THIEF, (in penal statute). 3 Metc. (Mass.) 457; 4 *Id.* 360; 22 Pick. (Mass.) 1.

COMMON APPENDANT, (defined). 10 Wend. (N. Y.) 639, 648.

COMMON ASSURANCES.—The legal evidences of the translation of property, whereby every person's estate is assured to him, and all controversies, doubts and difficulties are either prevented or removed. The common assurances are of four kinds: (1) By matter *in pais*, or deed, which is an assurance transacted between two or more private persons, *in pais*, in the country; that is (according to the old common law) upon the very spot to be transferred. (2) By matter of "record," or an assurance transacted only in the public courts of record, or under the authority of a public board or commission empowered by statute to record its proceedings. (3) By special "custom" obtaining in some particular places, and relating only to some particular species of property; which three are such as take effect during the life of the party conveying or assuring. (4) The fourth takes no effect till after his death, and that is by "devise," contained in his last will and testament. (2 Bl. Com. 290.)—*Wharton*.

COMMON BAIL.—See **BAIL**, § 1.

COMMON BAR.—In an action of trespass *quare clausum fregit*, if the plaintiff declared against the defendant for breaking his close in a

certain parish, without otherwise particularizing or describing the close, and the defendant himself happened to have any freehold land in the same parish, he frequently affected to mistake the close in question for his own, and pleaded what was called the "common bar," viz., that the close in which the trespass was committed was his own freehold, which compelled the plaintiff to new assign, *i. e.* to assign his cause of complaint over again, alleging that he brought his action in respect of a trespass committed upon a different close from that claimed by the defendant as his own freehold.—*Brown*.

COMMON BARRETRY.—See BARRETRY, § 2.

COMMON BARRETOR, (in an indictment). 11 Pick. (Mass.) 438.

COMMON BENCH.—Another name for the English Court of Common Pleas (*q. v.*) See BENCH.

COMMON CALAMITY.—See COMMONORIENTES.

COMMON CARRIER.—A common carrier is one who, by profession to the public, undertakes for hire to transport from place to place, either by land or water, the goods of such persons as may choose to employ him. Instances of common carriers are: the proprietor of a common stage coach or wagon, railroad companies, and the owner or master of a general ship. In England, a railway company is not a common carrier of passengers, and is only a common carrier of those goods which it is bound by statute to carry, or which it professes to carry without express stipulations limiting its liability. (Chit. Cont. 439; Hodg. Railw. 576; 1 Sm. Lead. Cas. 223.) The peculiarity of a common carrier of goods is, that he is bound to convey the goods of any person who offers to pay his hire, (1 Sm. Lead. Cas. 223,) and that he is an insurer of goods entrusted to him, *i. e.* he is liable for their loss or injury, in the absence of a special agreement or statutory exemption, and unless the loss or injury was caused by the act of God or the public enemy. (Nugent v. Smith, 1 C. P. D. 423; Chit. Cont. 442. As to common carriers of passengers, see *Id.* 463.) In this respect a common carrier is an exception to the general rule, that bailees for reward are only liable for ordinary negligence. See BAILMENT; COMMON CARRIERS' ACT.

COMMON CARRIER, (defined). Dav. (U. S.) 82; 2 Ga. 349; 1 Pick. (Mass.) 51; 3 Wend. (N. Y.) 158, 161; 13 *Id.* 387, 611; 14 *Id.* 215, 225; 7 Hill (N. Y.) 533, 564; 1 Hayw. (N. C.) 14; 32 Pa. St. 208; 2 Wheel. Am. C. L. 524.

— (who is). 2 Harr. (Del.) 48; 19 Ill. 556; 30 Miss. 231; 19 Barb. (N. Y.) 346; 28 *Id.* 403; 5 Duer (N. Y.) 43, 45; 10 Johns. (N. Y.) 1; 3 Wend. (N. Y.) 158; 5 *Id.* 33; 25 Pa. St. 120; 4 Heisk. (Tenn.) 661.

— (who is not). 25 Mich. 329; 3 Abb. (N. Y.) App. Dec. 610; 19 Barb. (N. Y.) 577; 12 Johns. (N. Y.) 232; 49 N. Y. 122; 1 Hayw. (N. C.) 14; 20 Ohio 69; 83 Pa. St. 446; 18 Tex. 498; 2 Car. & P. 598; 2 Com. B. 887.

— (carrying parcels by stage coach). 2 Dana (Ky.) 430; 1 Pick. (Mass.) 50, 53; 7 N. H. 157; 3 Barb. (N. Y.) 388; 5 Rawle (Pa.) 179.

— (coachman, if not paid for goods, is not). 1 Comy. 25.

— (driver of a stage is, under statute). 4 Dowl. & Ry. 824.

— (express company is). 3 Otto (U. S.) 174; 36 Ga. 635; 24 Ind. 403; 30 *Id.* 250; 97 Mass. 124; 51 Barb. (N. Y.) 69; 2 Bosw. (N. Y.) 589; 34 How. (N. Y.) Pr. 421.

— (palace car company is not). 73 Ill. 360.

— (railroad company is). 19 Ill. 578; 20 *Id.* 407; 25 Ind. 434; 31 How. (N. Y.) Pr. 430; 5 Pa. L. J. Rep. 126.

— (when railroad company is not). 27 Ga. 535; 20 Ill. 623; 26 Vt. 247; 10 Com. B. 454.

— (sleeping car company is not). 22 Int. Rev. Rec. 305.

— (steamboat company is). 30 Ala. 608; 31 *Id.* 501; 40 *Id.* 184; 2 Watts (Pa.) 443.

— (telegraph company is). 13 Cal. 422; 1 Daly (N. Y.) 575, 584.

— (telegraph company is not). 18 N. H. 342.

— (tow-boat owner is). 24 La. Ann. 165.

— (tow-boat owner is not). 5 Biss. (U. S.) 460; 1 Brown Adm. 59, 281; 1 La. 350; 3 Hill (N. Y.) 9; 2 N. Y. 204; 13 Wend. (N. Y.) 337; 77 Pa. St. 238.

— (when ferryman is). 3 Mete. (Ky.) 51.

— (when forwarder is). 9 Barb. (N. Y.) 317.

— (duty of). 2 Hill (N. Y.) 323, 623.

— (liability of). 19 Wend. (N. Y.) 236, 251, 281, 329; 21 *Id.* 153, 190, 354; 25 *Id.* 459, 660; 1 T. R. 33.

— (liable, how long). 17 Wend. (N. Y.) 305.

— (how far responsible for baggage lost). 9 Wend. (N. Y.) 85.

— (must be engaged in carrying as a business). 2 Ga. 349.

— (must carry for hire). 2 Story (U. S.) 16.

— (may limit his liability). 11 Eng. L. & Eq. 506.

COMMON CARRIERS' ACT.—The Act 2 Geo. IV. and 1 Will. IV. c. 68, amended by the Stat. 28 and 29 Vict. c. 94. Its object was to modify the common law rule, that a common carrier was liable for goods lost or injured

in his custody, unless he could prove a special contract to the contrary. (Chit. Cont. 455; Hodg. Railw. 599.) Its principal provisions are: (1) that no carrier by land is to be liable for loss of or injury to certain valuable descriptions of property (coin, jewelry, pictures, &c.,) beyond the value of £10, unless their value was declared at the time of delivery (§ 1); (2) that any carrier may require an increased rate of charge for such articles over the value of £10, by a notice affixed in his receiving house, and all persons delivering such articles are bound by the notice, without proof of its having come to their knowledge. (§ 2.) As to the general effect of the act, see Chit. 457. The Railway and Canal Traffic Act, 1854, § 7, contains further provisions limiting the liability of railway companies for loss or injury to horses, cattle, &c. Hodg. Railw. 592.

COMMON CHASE.—In old English law, a place where all alike were entitled to hunt wild animals.

COMMON COUNCIL.—(1) The legislative body of a municipal corporation. (See ALDERMEN.) (2) One of the ancient names of the English parliament was "the common council of the realm."

COMMON COUNTS.—The *indebitatus* counts in declarations in *assumpsit*, for goods sold and delivered, or bargained and sold, for work done, for money lent, for money paid, for money received to the use of the plaintiff, for interest or for money due on an account stated, were so called.—See INDEBITATUS ASSUMPSIT; INSIMUL COMPUTASSENT; QUANTUM MERUIT; QUANTUM VALEBAT.

COMMON DAY.—In old English practice, an ordinary day in court. (Stat. 13 Rich. II. st. 1, c. 17.)—Cowell; *Termes de la Ley*.

COMMON DEBTOR.—In the Scotch law, a debtor whose goods have been seized by several creditors.—*Beil Dict.*

COMMON DECEIVER, (*communis deceptor*, in an indictment). 6 Mod. 311.

COMMON DRUNKARD, (in a statute). 2 Gray (Mass.) 74; 5 *Id.* 85; 112 Mass. 286.

COMMON EMPLOYMENT.—

§ 1. In the law of master and servant, the common law rule is that a master is not liable to his servant for injuries resulting from the negligence of a fellow-servant in the course of their common employment, unless the servant causing the injury was incompetent to discharge his duty, or the servant injured was not at the time acting in his master's employment.

Underh. Torts 42; Priestly v. Fowler, 3 Mees. & W. 1; Wiggett v. Fox, 11 Ex. 832.

§ 2. The question whether there is a common employment, *i. e.* whether two servants are fellow-servants within this rule, depends on whether they are under the orders and control of the same person, although their wages may be paid by different persons (Rourke v. White Moss Colliery Co., 1 C. P. D. 556); and they are not the less fellow-servants because one is a foreman and the other a subordinate workman (Wilson v. Merry, L. R. 1 Sc. & D. 326), or because the duties of one are dissimilar to those of the other, provided the risk of injury from the negligence of the one is so much a natural and necessary consequence of the employment which the other accepts that it must be included in the risks which have to be considered in his wages. Morgan v. Vale of Neath R. Co., L. R. 1 Q. B. 149.

§ 3. **Employers' Liability Act, 1880.**—The common law rule on the subject has been altered, in England, by the Employers' Liability Act, 1880, which provides that a workman shall be entitled to compensation for personal injuries caused (1) by reason of the negligence of any person in the exercise of a superintendence intrusted to him by the employer; (2) by reason of the negligence of any person in the service of the employer to whose directions the workman was bound to conform and did conform, whereby the injury was caused; (3) by reason of the act or omission of any person in the service of the employer, in obedience to some improper or defective rule, by-law, &c., of the employer; or, (4) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal points, locomotive or train on a railway. Provision is made by the act, limiting the amount of compensation recoverable, the time for bringing the action, &c., (which must, in the first instance, be brought in a county court,) and other matters. See MASTER; NEGLIGENCE.

COMMON FIELD, (in acts of congress). 1 Black (U. S.) 179, 595.

COMMON FINE.—A small sum of money paid to the lords by the residents in certain leets.—*Fleta* l. 7, c. xlviii.

COMMON FISHERY.—A public fishing ground where all persons may fish, as the sea or a navigable river. This term must not be confounded with "common of fishery," as to which see FISHERY.

COMMON FOOT-PATH, (in an indictment). 6 Mod. 255.

COMMON GAMBLER, (indictable at common law). 1 Dak. T. 293.

COMMON GAMBLERS, (in a statute). 6 Abb. (N. Y.) Pr. N. S. 132.

COMMON HALL.—A court in the city of London, at which all the citizens, or such as are free of the city, have a right to attend.—*Wharton*.

COMMON HIGHWAY.—Any public, open highway.

COMMON INFORMER.—A person who prosecutes others for breaches of penal laws, or furnishes evidence on criminal trials, and receives as compensation the whole or a portion (usually a moiety) of the amount of the penalty or fine recovered. See **INFORMER**.

COMMON INTENDMENT—COMMON INTENT.—See **INTENDMENT**; **INTENT**.

COMMON JURY.—An ordinary petit jury as distinguished from a special or struck jury.

COMMON LABOR, (in Sunday law). 4 Harr. (Del.) 132; 9 Ind. 112; 14 *Id.* 396; 33 *Id.* 215; 15 Ohio 225.

COMMON LAW.—

§ 1. **Defined**.—In the widest sense of the word, the common law is that part of the law of England which, before the Judicature Acts, was administered by the common law tribunals, especially the former Courts of Queen's Bench, Common Pleas, and Exchequer, as opposed to Equity (*q. v.*) or that part of the law of England which was administered by the Court of Chancery.

§ 2. **Component parts**.—The common law consists of (1) what may be called the original common law, or those rules which have been administered by the common law courts from time immemorial; in this sense "common law" is opposed to "statute law;" (2) those modifications and extensions of the original common law which have been introduced by statute. Thus, the course in which lands descend by inheritance was formerly regulated entirely by the original common law, but the present law of inheritance (though still part of the common law) consists, to a considerable extent, of statutory rules; (3) the customary law. See 1 Bl. Com. 67 *et seq.*; Broom Com. L. 3 *et seq.* Also, **CUSTOM**.

§ 3. **Civil and criminal**.—With reference to the subjects with which it deals, the common law is divided into civil and criminal. The former includes the two great branches of private rights arising out of contracts and torts (*q. v.*) The latter deals with crimes (*q. v.*) In addition to these subjects, the superior courts of common law had jurisdiction in other matters by means of the writs of *habeas corpus*, *mandamus*, and prohibition (*q. v.*)

§ 4. **Adoption of the common law**.—In the United States, the English common law has been adopted as the basis of our jurisprudence in all the States except Louisiana. Many of its most valued principles have been embodied in the United States constitution, and in those of the several States; and in many of them the common law and the statutes of England, in force when such State was a colony, are by the State constitution declared to be the law of the State until repealed.

But the English common law is not to be considered in all respects as that of the United States, or of the several States. Its general principles are adopted only so far as they are applicable to our situation and form of government.

COMMON LAW, (defined). 21 How. (U. S.) 481, 486; 3 Pet. (U. S.) 433, 446, 447; 8 Pick. (Mass.) 316.

— (in amendment to the United States constitution). 1 Baldw. (U. S.) 394, 405, 544, 555; 1 Gall. (U. S.) 420; 3 Pet. (U. S.) 447.

— (in contradistinction to statute law). 6 Pet. (U. S.) 102.

— (as applied to a will, in a devise to an alien). 2 Halst. (N. J.) 335.

— (remedies in United States courts, to be at). 21 How. (U. S.) 481; 3 Pet. (U. S.) 433.

— (usage establishes). 1 Mass. 60.

COMMON LAW JURISDICTION, (in an act of congress relating to naturalization). 77 Ill. 645.

COMMON LAW PROCEDURE ACTS.—Three acts of parliament, passed in the years 1852, 1854 and 1860, respectively, for the amendment of the procedure in the common law courts. The Common Law Procedure Act of 1852 is Stats. 15 and 16 Vict. ch. 76; that of 1854, Stats. 17 and 18 Vict. ch. 125; and that of 1860, Stats. 23 and 24 Vict. ch. 126.—*Mozley & W.*

COMMON LAWYER.—A lawyer learned in the common law.

COMMON LEARNING.—Familiar law or doctrine. Dyer 27 b, 33.

COMMON NUISANCE.—A nuisance which affects the public or community in general, and not a particular individual only; a public nuisance. *See* NUISANCE.

COMMON PASTURAGE AND HERBAGE, (defined). 17 Ch. D. 577.

COMMON PLACE.—One of the ancient names of the Court of Common Pleas (*q. v.*)

COMMON PLEAS.—

§ 1. The Court of Common Pleas (or Common Bench) was originally the only superior court, in England, having jurisdiction in ordinary civil actions between private persons, although subsequently the Courts of King's (or Queen's) Bench and Exchequer (*q. v.*) acquired concurrent jurisdiction in all actions, except real actions, in which the Court of Common Pleas retained exclusive jurisdiction. (*See* ACTION; DOWER; QUARE IMPEDIT.) It was a superior court of record, consisting of a lord chief justice and five puisne justices. (Sm. Ac. 4 *et seq.*; 3 Bl. Com. 37; Co. Litt. 71b.) By modern acts of parliament exclusive jurisdiction was given to it in appeals from revising barristers, in petitions against parliamentary elections, and in respect of acknowledgments under the Fines and Recoveries Act.

§ 2. Common Pleas Division.—By the Judicature Acts, 1873, 1875, the jurisdiction and judges of the Court of Common Pleas were transferred to the High Court of Justice; the judges form a division of the High Court called the "Common Pleas Division," and all actions which were formerly within the exclusive jurisdiction of the Court of Common Pleas must be assigned to that division; the judges for the trial of election petitions, however, are now selected from all the three common law divisions. Jud. Act, 1873, §§ 16, 31 *et seq.*

§ 3. Common Pleas at Lancaster.—The Court of Common Pleas at Lancaster was a Palatine Court having a local common law jurisdiction. By the Judicature Act its jurisdiction was transferred to the High Court of Justice. *Id.* § 16; 3 Bl. Com. 79. *See* COUNTY PALATINE; PALATINE COURTS.

COMMON PRAYER.—The liturgy, or public form of prayer prescribed by the Church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty.

COMMON RECOVERY.—*See* RECOVERY.

COMMON RIGHT, (defined). 2 Green (N. J.) 432; 6 Cow. (N. Y.) 548.

COMMON SCHOOLS.—Public, or free schools, maintained at public expense, for the elementary education of the children of all classes. 2 Kent Com. 195-202.

COMMON SCHOOLS, (defined). 12 Allen (Mass.) 500, 508.

— (in State constitution). 13 Barb. (N. Y.) 400.

— (of Massachusetts). 12 Allen (Mass.) 508; 103 Mass. 98.

COMMON SCOLD.—A quarrelsome, scolding woman, who, by her abusive language, frequently disturbs the neighborhood. (2 Bl. Com. 168.) Such a woman is punishable as a nuisance.

COMMON SEAL.—A seal used by a corporation as the symbol of their incorporation.

COMMON SELLER, (of liquor). 49 Me. 594; 1 Cush. (Mass.) 2.

COMMON SENSE.—Those perceptions, associations, and judgments, in relation to persons and things, which agree with those of the generality of mankind. When a particular individual differs from the generality of persons in these respects, he is said not to have common sense, or not to be in his senses. (1 Chit. Med. Jur. 334.)—*Bouvier*.

COMMON SERJEANT.—A judicial officer of the corporation of the city of London. He is a kind of assistant or deputy to the recorder, and as such is a judge of the mayor's court in the absence of the recorder. (Cand. M. C. Pr. 2.) He is also a judge of the Central Criminal Court (*q. v.*)

COMMON VOUCHER.—The voucher in a common recovery. (*See* RECOVERY.) He was called "common" because the crier of the court was usually the voucher in all common recoveries.

COMMON WAY, (in an indictment). 1 Vent. 208.

COMMON WEAL.—The public, or common good or welfare.

COMMONABLE.—

§ 1. In its widest sense commonable is applied to a thing over, by, or in respect of which a right of common may be exercised. Thus, "commonable land" is land subject to a right of common; therefore, under a grant of common of pasture, pasture land only is commonable, *i. e.* may be used by the commoner. (Perk. Prof. Bk. § 108.) So a "commonable messuage" is a house to which a right of common is attached (General Incl. Act, 1845, § 53); and "commonable beasts" (in the primary sense of the phrase) are those animals which a commoner is entitled to put on the common; thus, sheep are commonable beasts under an ordinary right of common of pasture, but not in royal forests. (Manw. 82.) As the only commonable beasts in the case of common appendant are beasts used in agriculture (horses,

cattle and sheep), the phrase "commonable beasts" is generally confined to those animals, to the exclusion of hogs, goats, geese, &c. Co. Litt. 122a; *Smith v. Feverell*, 2 Mod. 7. See PAWNAGE.

§ 2. "Commonable" is also used in a special sense as opposed to "common;" thus, "commonable rights" are rights of pasture over lammas-lands, cattle-gates or stints, &c., which are not rights of common in the strict sense (see COMMON, § 18), and "commonable lands" include not only lammas-lands, cattle-gates, &c., but also shack-lands, open fields, &c., which are subject to the rights of common, but differ from "common lands," such as manorial wastes, &c., in being subject to severalty rights. See COMMON, § 7; SEVERALTY. Cooke Incl. 42.

COMMONAGE.—In old deeds, the right of common. See COMMON.

COMMONALTY.—(1) The common people and citizens of England, as distinguished from the royal family and the nobility. (2) The mass of citizens of a city, as distinguished from those holding corporate offices. (3) The members of an incorporated company other than its officers.

COMMONALTY, (who is included in). 4 East 327, 334, 335.

COMMONANCE, or COMMUNANCE.—The commoners, or tenants and inhabitants, who have the right of common or communing in open field.—*Cowell*.

COMMONERS.—Persons having a right of common.

COMMONS.—(1) Part of the demesne land of a manor (or land the property of which was in the lord) which, being uncultivated, was termed the lord's waste, and served for public roads, and for common of pasture, to the lord and his tenants. (2 Bl. Com. 90.) (2) Those subjects of the English crown who have no titles of nobility, and who are represented in parliament by the house of commons.

COMMONS, (in a statute). 61 Mo. 203.

COMMONWEALTH.—(1) The social state of a country, without regarding its form of government; also a republic, or that form of government in which the administration of public affairs is open to all, with few, if any, exceptions. The States of Kentucky, Massachusetts, Pennsylvania, and Virginia, are styled "Commonwealths." (2) The period of the administration, in England, of the parliamentary army, and the Protector Cromwell.

COMMORANCY—COMMORANTS.—

§ 1. Commorants are persons residing within a certain district, and commorancy

is the fact of their residence there. Thus, all persons commorant within the district of a court leet (*q. v.*) were bound to attend its sittings in ancient times. 4 Bl. Com. 273. See RESIANT.

§ 2. Formerly it was supposed that there might be a right of common in the inhabitants of a vill or township, by reason of their commorancy, but the contrary was decided in *Gateward's Case*, 6 Co. 59; *Elt. Com. 5*. See COMMON; CUSTOM; EASEMENT.

§ 3. In American law, commorancy seems to mean a mere temporary residence in a given place. 19 Pick. (Mass.) 248.

COMMORIENTES.—Persons dying together or simultaneously. The term is applied to persons who perish by a common calamity (shipwreck, massacre, &c.), so that it cannot be ascertained which died first. Where they stand in the relation of ancestor and heir, or the like, so that the devolution of a right depends upon the order of death, the question becomes of importance, but neither the English nor the American law provide any rules for determining the question in the absence of evidence. (Best Ev. 525; *Coote Pro. Pr.* 182; *Fearn Post. Works*; 1 Barb. Ch. (N. Y.) 264; 8 Metc. (Mass.) 371.) The Roman law had a system of presumptions to determine the question, (*Dig. xxxiv. 5 fr. 9*; 2 Savigny Syst. 20) some of which have been adopted by the Code Civil.

COMMORTH, or COMORTH.—A contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII. c. 6.—*Cowell*.

COMMOTE.—Half a cantred or hundred in Wales, containing fifty villages. (*Stat. Walliæ*, 12 Edw. I.) Also a great seignory or lordship, and may include one or divers manors. Co. Litt. 5.

COMMUNE.—(1) In old English law, the people, commonalty. (2) In old French law, a municipal corporation. (3) The French revolutionary committee of 1792–3. (4) The attempt to establish absolute municipal self-government in Paris, in 1871.

COMMUNE CONCILIUM REGNI ANGLIÆ.—The common council of the king and people assembled in parliament.

COMMUNE FORUM.—The common, fixed place of justice, or sitting of the courts.

COMMUNE PLACITUM.—A common action or plea, such as an action of debt.—*Bur-rill*.

COMMUNE VINCULUM.—A common or mutual bond, or union. See 2 Bl. Com. 250.

COMMUNI CUSTODIA.—An obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body. (12 Car. II. c. 24.)—*Reg. Orig.* 161.

COMMUNI DIVIDENDO.—A civil law action, similar to the present partition suit, to procure a division of land held by several persons in common, but not in partnership.—*Calv. Lex.*

COMMUNIA.—(1) Common (*q. v.*) (2) Communities; towns incorporated by royal charter.

**COMMUNIA PLACITA NON TEN-
ENDA IN SCACCARIO.**—An ancient writ directed to the treasurer and barons of the exchequer, forbidding them to hold pleas between common persons (*i. e.* not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same. *Reg. Orig.* 187, since superseded by 2 and 3 Wm. IV. c. 39.

COMMUNICATION.—(1) Confer-
ence of two or more prior to making an
agreement; information; consultation.
(2) Intercourse; connection.

COMMUNINGS.—In the Scotch law, the negotiations preliminary to the entering into a contract.

COMMUNIO BONORUM.—A civil law term signifying a community (*q. v.*) of goods.

Communis error facit jus (4 Inst. 240): Common error makes a right. "It has been sometimes said," observed Lord Ellenborough, in *Isherwood v. Oldknow*, 3 Mau. & S. 396, "*communis error facit jus*; but I say, *communis opinio* is evidence of what the law is, not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the groundwork and substratum of practice." See *Broom Max.* (5 edit.) 139.

COMMUNIS PARES.—In the civil law, a party wall.

COMMUNIS RIXATRIX.—A common (female) brawler, a scold. See **COMMON SCOLD**.

COMMUNIS SCRIPTURA.—A chirograph (*q. v.*)

COMMUNIS SEMITA, (means a public way). 2 Ld. Raym. 1174.

COMMUNIS STIPES.—A common stock of descent; a common ancestor.

COMMUNISM.—An equality of distribution of the physical means of life and enjoyment as a transition to a still higher standard of justice, that all should work according to their capacity and receive according to their wants. 1 Mill Pol. Ec. 248.

COMMUNITY.—

§ 1. **Generally.**—A society of people living in the same place, under the same laws and regulations, and who have common rights and privileges.

§ 2. **In the French law.**—A species of partnership which a man and woman contract by lawfully marrying each other. It is *conventional* when regulated by express agreement, and *legal* when not so regulated but arising out of the marriage itself. Community in this sense still exists in Louisiana.

COMMUNITY PROPERTY, (defined). 12 La. Ann. 598.

COMMUTATION.—

§ 1. **In criminal law.**—The substitution of a lesser grade of punishment for that inflicted by the sentence pronounced upon conviction.

§ 2. **In civil matters.**—The conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment. Commutation may be effected by private agreement, but it is usually done under a statute. Thus, in England, under the Tithes Commutation Acts, "a rent-charge, varying with the price of corn, has been substituted all over the kingdom for the inconvenient system of taking tithes in kind." (Wms. Real Prop. 347. See **TITHES**.) Under the Copyhold Acts the rents, fines, heriots or other manorial rights of the lord of a manor may be commuted into a rent-charge (either fixed or varying with the price of corn), together with a small fixed fine on death or alienation, or in various other manners. (Elt. Copyh. 292.) Under the Succession Duty Act the commissioners may commute duty presumptively payable for a certain sum to be presently paid (Stat. 16 and 17 Vict. c. 51, § 41. This power is seldom exercised unless there is some special reason, *e. g.* where the property subject to the duty is being sold, divided, or otherwise dealt with. Hans. S. D. 329); and under the Pensions Commutation Acts the right of an officer or other public servant to receive a pension may be commuted by the payment of a gross sum of money.

COMMUTATION, (of a sentence). 31 Ohio St. 206.

COMMUTATIVE CONTRACT.—

One in which each of the contracting parties gives and receives an equivalent.

COMMUTE FOR TOLLS, (power to, must be expressly conferred). 10 Pet. (U. S.) 383.

COMPACT.—An agreement or contract of a formal character; a covenant, either between nations, States or individuals.

COMPACT, (defined). 4 Gill & J. (Md.) 1.

—(synonymous with "contract"). 8 Wheat. (U. S.) 1, 92; 4 Gill & J. (Md.) 5.

—(between States, consent of congress). 8 Wheat. (U. S.) 1, 92.

COMPANAGE.—All kinds of food, except bread and drink.—*Spel. Gloss.*

COMPANION OF THE GARTER.

—One of the knights of the order of the garter.

COMPANY.—

§ 1. **In general.**—A company is an association of persons formed for the purpose of some business or undertaking carried on in the name of the association, each member having the right of assigning his share to any other person, subject to the regulations of the company. A partnership is a company, and the word is also used to designate those members of a firm whose names do not appear in the firm name.

§ 2. **Incorporated.**—An incorporated company is a corporation formed for the purpose of carrying on a business for profit. (See ASSOCIATION.) Such companies are incorporated either (1) by charter (*q. v.*) (Lind. Part. 7, 152); (2) by special legislative act (*Id.* 156); or, (3) by registration under one of the public general acts relating to corporations. For a history of these acts, see Thr. Jt. S. Co. 14 *et seq.*; Lind. Part. 8 *et seq.* See COMPANIES ACTS.

§ 3. **Unincorporated companies** are associations of individuals not forming a corporation, but carrying on business under a corporate name, and having certain qualities resembling those of incorporated companies.

To this class belong, in England, (1) companies formed under the Act 7 Will. IV., and 1 Vict. c. 73, which enables the crown, without incorporating a company, to confer upon it, by letters-patent, certain privileges, including the power of suing and being sued by a public officer (*q. v.*) and limited liability (Lind. Part. 154); (2)

companies formed under private acts of parliament, generally with the power of suing and being sued by a director or other officer (*Id.* 155); (3) companies formed for banking, under the Act 7 Geo. IV. c. 46, and having certain privileges, such as that of suing and being sued by a public officer (*Id.* 162); (4) cost book companies (*q. v.*); (5) companies formed without the authority of a charter or act of parliament, and before 2d November, 1862, (see Companies Act, 1862, § 4,) consisting of a large number of members, with transferable shares, and a directorate for the management of the business. The question whether such companies are illegal has been much discussed. (*Id.* 11, 81, 189; Thr. Jt. S. Co. 10.) To this class belong what are sometimes called "scrip companies," in which the members simply hold scrip certificates, transferable by delivery. Lind. Part. 128, 195. See SCRIP.

§ 4. **Unlimited.**—Companies are described as "limited" or "unlimited," according as the liability of their shareholders is or is not limited. In the case of an unlimited company, each shareholder is liable to contribute to the debts of the company, to the full extent of his property (see CALL,) but some insurance companies, though strictly speaking unlimited, are practically limited, by the insertion, in each policy, of a clause restricting the claim of the assured to the amount remaining unpaid upon each share.

§ 5. **Limited.**—A company is limited either by the amount of the share which each member takes in the company, and beyond which he therefore cannot be compelled to contribute to the debts of the company (company limited by shares), or by the amount which each member undertakes by the memorandum of association (*q. v.*) to contribute to the assets of the company in the event of its being wound up (company limited by guarantee); the latter mode is used in the case of companies supported by annual subscriptions, or formed on the principle of mutual assurance. (Thr. Jt. S. Co. 129.) There is a hybrid kind of company, in which the liability of the shareholders is limited (either by shares, or by guarantee), while the liability of the directors or managers, or the managing director, is unlimited. (Companies Act, 1867, §§ 4 *et seq.*) Provision for the creation of such companies seems to have been considered desirable, from a mistaken view of the nature of French *sociétés en commandite*; the provision is a dead letter. See COMMANDITE.

§ 6. **Limited and reduced.**—A company formed for profit must, if the liability of its members is limited, have the word "limited" as the last word in its name. (Companies Act, 1862, §§ 8, 9, 41, 42; Companies Act, 1867, § 23.) When a company limited by shares has obtained the leave of the court to reduce its capital, the words "and reduced" must be added and used as the last words of its name, for a certain period to be fixed by the court. Companies Act, 1867, § 10; Thr. Jt. S. Co. 214; Companies Act, 1887. See REDUCTION OF CAPITAL.

§ 7. **Limited company with reserve capital.**—Under the Companies Act, 1879, a limited company may create a reserve capital as security for its creditors, by providing that a cer-

tain portion of its capital shall not be capable of being called up except in the event of the company being wound up.

§ 8. **Limited banks of issue.**—A bank of issue registered as a limited company, is not entitled to limited liability in respect of its notes. Act of 1879, § 6.

§ 9. **Joint stock companies.**—Joint stock companies are those having a joint stock or capital, which is divided into numerous transferable shares, or consists of transferable stock. (Lind. Part. 6. See STOCK.) The term "joint stock" was originally applied to those companies which were formed without the authority of any statute; and afterwards to those formed under various acts. *Id.* 5; Thr. Jt. S. Co. 10.

§ 10. **Public and private companies.**—Companies are sometimes divided into public and private; but in this, as in many other instances, the word "public" is used with no definite signification; and it is extremely difficult to say exactly what the essential character of a public company really is. It has, however, been decided that banking companies, governed by the 7 Geo. IV. c. 46 (*supra* § 3), are public companies within the meaning of the Stats. 1 and 2 Vict. c. 110, § 14, (*M'Intyre v. Connell*, 1 Sim. N. S. 225; enabling separate creditors of shareholders in public companies to obtain charging orders on their debtors' shares (*see* CHARGING ORDER,)) and from that decision it would seem that those companies only are public which are either incorporated, or, if unincorporated, are endowed by the crown or the legislature with some special privileges, and are bound to make some kind of return or list of their members, which the public have a right to see. A mere partnership, however large, and however transferable its shares, is apparently not a public company. Lind. Part. 13.

§ 11. Sometimes, however, "private company" is used to denote a company the shares in which are held by a few persons personally acquainted with one another, and are not dealt with in the market. See ASSOCIATION; CORPORATION; PARTNERSHIP.

COMPANY, (defined). 33 Me. 32, 36.
— (distinguished from "club"). 13 Eng. L. & Eq. 589.

— (distinguished from "corporation," "partnership"). Ang. & A. Corp. 32 n. (1).

COMPANY, (in a bond of indemnity). 2 Campb. 422.

— (in a partnership agreement). 103 Mass. 28.

COMPANY, OR Co., (when rejected as surplusage). 4 Wheel. Am. C. L. 170.

COMPANIES ACTS.—The principal companies acts now in force in England are, (1) The Companies Clauses Consolidation Acts, 1845 and 1863, containing provisions applicable to companies incorporated by special acts of parliament, such as railway and canal companies. (2) The Companies Acts, 1862 to 1879, regulating the incorporation, management and dissolution of companies formed under them. As the majority of modern companies are formed under these acts, it may be convenient to state generally that under their provisions any seven or more persons associated for any lawful purpose may form themselves into an incorporated company, with or without limited liability, by subscribing a memorandum of association and causing it to be registered at the registry of joint stock companies; provision is made for meetings and resolutions of the members, the periodical returns to be made to the registrar, and for the winding-up of the company. (*See* the various titles; *also*, ARTICLES OF ASSOCIATION.) (3) There are also various miscellaneous acts relating to companies, such as the Companies Seals Act, 1864, enabling an English company to have a seal for use abroad; and the Joint Stock Companies Arrangement Act, 1870, to facilitate compromises and arrangements between creditors and shareholders of companies in liquidation; and acts relating to special kinds of companies, such as railway and life assurance companies.

COMPARATIO LITERARUM.—In the civil law, a comparison of writings, sometimes permitted. See COMPARISON OF HANDWRITING.

COMPARISON OF HANDWRITING.—By the common law it was not allowable, except in a few cases, to prove the handwriting of a party to a document by a comparison between it and other documents proved or assumed to be in his handwriting. (Best Ev. 333.) This rule was practically abolished in England by the Common Law Procedure Act, 1854, §§ 27, 103, and 28 Vict. § 18, (*Id.* 345,) and it has been more or less modified in the several States of the Union. See the statutes of the several States.

COMPASS, MARINER'S.—An instrument used by mariners to point out the course of a ship at sea. It consists of a magnetized steel bar called a "needle," attached to a card upon which the points of the compass are drawn and supported by a fine pin, upon which it turns freely

in a horizontal plane. The needle (subject to some variations) always points to the north.—*Wharton*.

COMPASS, (defined). 4 Com. Dig. 733 n. (o).

COMPASSING.—Imagining or contriving.

COMPASSING, (in treason). 1 Hale P. C. 107.

COMPATERNITY.—Spiritual affinity.

COMPATIBILITY.—Such harmony between the duties of two offices that they may be discharged by one person.—*Bouvier*.

COMPEARANCE.—A Scotch law term signifying an appearance for a defendant by counsel.—*Bell Dict.*

COMPEL AND FORCE, (means active force). 1 Car. & P. 301, 302.

COMPELLATIVUS.—An adversary or accuser.

COMPELLED LEGALLY, (defined). 3 Pick. (Mass.) 429.

Compendia sunt dispendia (Co. Litt. 805): Abbreviations are detriments.

COMPENDIUM.—An abridgment (q. v.)

COMPENSACION.—In the Spanish law, the extinguishment of a debt in favor of A. against B., by one of equal dignity in favor of B. against A.

COMPENSATIO CRIMINIS.—Compensation of guilt. A term used by the canonists. Where husband and wife had both been guilty of adultery, there was, according to the doctrine of the Canon Law, a *compensatio criminum*, i. e. the guilt of the one was neutralized by that of the other, and both were restored to the position of innocent persons, i. e. neither could have a divorce. This doctrine has been held not to be part of the law of England. *Hope v. Hope*, 1 Swab. & T. 94; S. C. 27 L. J. P. & M. 43. But see *Seaver v. Seaver*, 2 Swab. & T. 665.

The doctrine is fully sustained in America, and the plea setting up the plaintiff's adultery is called "the plea of recrimination."

COMPENSATION.—

§ 1. Generally.—A recompense or reward for some loss, injury or service, especially when it is given by a statute. Thus, acts for the construction of railways and other public works provide for the payment of compensation to the owners

of land taken compulsorily for the purposes of the works. See EMINENT DOMAIN

§ 2. Vendor and purchaser.—In agreements between vendors and purchasers of real estate, it is usual to stipulate that errors, misdescriptions and omissions in the particulars of sale or description of the property, shall not avoid the sale, but be the subject of compensation. But such a stipulation will not protect the vendor in the case of a misdescription arising from fraud or gross negligence, or of such a nature that in the absence of it the purchaser would presumably not have entered into the contract at all. *Dart Vend.* 134 *et seq.* See *In re Arnold*, 14 Ch. D. 270.

§ 3. As to the doctrine of compensation with reference to questions of equitable election, see ELECTION.

COMPENSATION, (defined). 2 Dall. (U. S.) 304, 315; 15 Cal. 117; 8 Nev. 165; 3 Pittsb. (Pa.) 504, 517; 3 Wheel Cr. Cas. 100, 148.

—— (the different kinds). 16 La. Ann. 181.

—— (distinguished from "salary"). 76 Ill. 548, 552.

—— (in State constitution). 15 Cal. 117; 3 Stockt. (N. J.) 106; 9 Vr. (N. J.) 155; 14 Ohio 147, 175.

—— (in law of eminent domain). 42 Ala. 83; 34 Miss. 227; 36 *Id.* 300; 2 Harr. (N. J.) 25, 47; 15 Barb. (N. Y.) 255.

—— (just, defined). 8 Nev. 165.

—— (just, to solicitor). 1 Den. (N. Y.) 508.

—— (of officer). 76 Ill. 548.

—— (private property not to be taken without). 2 Dall. (U. S.) 304, 315.

—— (trustee is not entitled to, for personal trouble and time). 5 Madd. 90; 3 P. Wms. 248, 251.

COMPERTORIUM.—A judicial inquest in the civil law, made by delegates or commissioners to find out and relate the truth of a cause. *Paroch. Antiq.* 575.

COMPERUIT AD DIEM.—He appeared at the day. A plea in an action of debt on a bail bond.

COMPETENCY—COMPETENT.—

§ 1. Of witness.—A person is said to be competent to testify, or a competent witness, when he is allowed by law to give evidence on a trial or other judicial inquiry. The question of a witness' competency may arise either with reference to his ability to give evidence generally (absolute incompetency), or with reference to a particular fact or inquiry (relative incom-

petency). Thus an idiot is not competent to give evidence at all, while a person accused of a crime is not competent to give evidence as to it; nor is the husband or wife of such a person. (Best Ev. 188 *et seq.*; *Omychund v. Barker*, 1 Atk. 21.) This is the English rule; in many of the States it has been relaxed, and in some abolished. Competency is of course a different thing from credibility (*q. v.*)

§ 2. **Of evidence.**—Competency of evidence, is that quality which in law renders the evidence, whether written or otherwise, proper to be adduced on the trial before the jury or the court.

§ 3. **In the French law**, competency, as applied to a court, means its right to exercise jurisdiction in a particular case.

COMPETENT, (in fire insurance policy). 48 Ill. 31.

— (in probate act). 23 Cal. 476.

COMPETENT AUTHORITIES, (persons who exercised granting power from the crown). 8 Pet. (U. S.) 436.

COMPETENT COURT, (in debtor's act). 1 C. P. D. 169, 174.

COMPETENT JURISDICTION, (in a statute). 4 Ind. 355.

COMPETENT PARTY, (to complete a railroad). 35 Mich. 241.

COMPETENT TO DISPOSE BY WILL, (when does not depend on mental capacity). Wilberf. Stat. L. 140.

COMPETENT WITNESS, (defined). 4 Desau. (S. C.) 274.

— (who is, to a will). 6 Taunt. 220.

COMPETITION.—In the Scotch law, a contest among rival creditors.—*Bell Dict.*

COMPILATION.—A work composed of selected extracts from other works, methodically arranged; a digest (*q. v.*) is a compilation, but an abridgment (*q. v.*) is not, as it is (generally) a condensation of a single work.

COMPILATION, (distinguished from "abridgment"). 4 McLean (U. S.) 306, 314.

COMPLAINANT.—One who urges a suit or commences a prosecution against another.

COMPLAINT.—

§ 1. **In criminal law.**—An accusation (*q. v.*) of crime, before a competent officer, with an offer to prove the same to be true.

§ 2. **In code practice.**—The first pleading on the part of the plaintiff in a civil action.

§ 3. **In English practice.**—In proceedings before justices of the peace to obtain an order for the payment of money, the proceedings are commenced by a complaint, which is a statement of the facts of the case made by the complainant or person aggrieved, sometimes in writing, sometimes verbally. Stone Just. 75.

§ 4. As to bills of complaint, *see* that title.

COMPLAINT, (defined). 2 Chit. Gen. Pr. 155.
— (before a magistrate). 11 Pick. (Mass.) 436.

— (in a statute). 107 Mass. 194.

— (in crimes act, means under oath). 16 Me. 117.

— (when includes "indictment"). 107 Mass. 194.

COMPLETED, (defined). 3 Jones (N. C.) L. 517.

— (a house, when). 115 Mass. 300.

— (a railroad, when). 34 Mich. 328.

— (a street, when). 12 Cush. (Mass.) 574.

COMPLICE.—One who is united with others in an ill-design; an associate; a confederate; an accomplice (*q. v.*)

COMPOS MENTIS.—Of sound mind.
See NON COMPOS MENTIS.

COMPOS MENTIS, (explained). 8 Mass. 130.
— (in the constitution, defined). 1 Whart. (Pa.) 52, 55. *See* NON COMPOS MENTIS.

COMPOSITIO MENSURARUM.—The title of an ancient ordinance for measures, not printed.—*Wharton*.

COMPOSITION.—

§ 1. **Generally.**—In its widest sense, composition is an arrangement between two or more persons for the payment by one to the other or others of a sum of money in satisfaction of an obligation to pay another sum differing either in amount or mode of payment. Composition also signifies the sum so agreed to be paid. *See* COMPOUND.

§ 2. Compositions are generally entered into by a person who is unable to pay all his debts in full, and whose creditors have agreed to accept a certain proportion of their debts, and release him from the rest, either absolutely or conditionally on the composition being duly paid. Such an arrangement is sometimes entered into by a deed, called a "composition deed" (*q. v.*)

§ 3. **In bankruptcy.**—In England, the creditors in a bankruptcy, may, by special resolution, sanction the acceptance of a composition offered by the bankrupt, but the terms must be sanctioned by the court. Bankr. Act, 1869, § 23.

§ 4. The creditors of a debtor unable to pay his debts, may, without any proceedings in

bankruptcy, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of their debts; certain formalities as to notice, &c., have to be complied with, and the debtor is required to present a statement of his assets and debts. If properly passed, the resolution, with the statement, is registered in the Court of Bankruptcy, and is then binding on all the creditors named in the debtor's statement; the composition may be enforced by motion to the court. (*Id.* § 126.) Proceedings by composition under section 126 somewhat resemble proceedings by liquidation (*q. v.*); but in the case of a composition, the property of the debtor is not taken out of him and vested in a trustee, nor distributed in the same manner in bankruptcy as is the case in liquidation, for the debtor must be left in possession of his property to enable him to pay the composition. *In re Adams*, L. R. 11 Eq. 204; *In re Kearly & Clayton*, 7 Ch. D. 615; *Breslaue v. Brown*, 3 App. Cas. 672.

§ 5. **Real composition.**—In the law of tithes any owner of land may claim exemption from tithes in respect of that land by reason of a real composition, which is an agreement made between him and the incumbent, with the consent of the ordinary and the patron, that the land shall for the future be discharged from payment of tithes by reason of some land or other real recompense given in lieu and satisfaction thereof. 2 Steph. Com. 727; Stat. 2 and 3 Will. IV. c. 100, § 2.

§ 6. **In patent law.**—A mixture of various materials, or chemical combination of such materials, for which, so combined, or for the process, a patent is asked.

COMPOSITION, (defined). Hob. 178, 179.

—— (compounding a popular action is). 2 Johns. (N. Y.) 405.

—— (deed of). 12 Pet. (U. S.) 178; 15 Wend. (N. Y.) 351; 4 Barn. & Ald. 691, 695; 4 Barn. & C. 506, 511; 4 East 373, 384; 1 Esp. 236; 2 T. R. 763; 4 *Id.* 166; 6 *Id.* 263.

COMPOSITION, LIQUOR, (in a statute). 3 Harr. (N. J.) 321.

COMPOSITION, MUSICAL, (in a declaration). 1 Chit. 24.

COMPOSITION OF A DEMAND, (defined). 2 Johns. (N. Y.) 405.

COMPOSITION DEEDS.—

§ 1. In the most general sense of the word, a composition deed is one executed by a debtor and his creditors, or a majority of them, for the purpose of winding-up the debtor's estate without recourse to the court. Thus, a debtor may by deed assign all his property to trustees in trust, to realize it and distribute the proceeds ratably among the creditors, or to pay them a stated composition (*q. v.*) Such a deed is an act of bankruptcy (*q. v.*)

§ 2. In the stricter meaning of the term, a composition deed is one by which the

debtor, either alone, or in conjunction with a surety, covenants to pay a stated composition to his creditors. This is followed by a declaration by the creditors, that they will accept the composition in full discharge of their claims. *Davids. Conv. v. (2)* 518.

§ 3. Composition deeds are not often entered into in England, except for the purpose of carrying out a resolution for composition, under Section 126 or Section 28 of the Bankruptcy Act, 1869, because if the concurrence of all the creditors is not obtained, the deed is not binding on the minority creditors who do not join, and therefore they have to be paid in full. See BANKRUPTCY; INSOLVENCY; INSPECTORSHIP DEEDS; LETTER OF LICENSE; LIQUIDATION.

COMPOST.—Several sorts of soil or earth, and other matters mixed, in order to make a superior sort of mould for fertilizing land.

COMPOST, (defined). 2 Chit. 655, 656.

COMPOUND.—

§ 1. To compound for a debt is for a debtor and creditor to agree that the creditor shall accept a composition or smaller sum in discharge of the original debt, *e. g.* on the ground of the debtor's inability to pay the whole. See ACCORD AND SATISFACTION; COMPOSITION.

§ 2. To compound for a debt in England, under a debtor's summons (*q. v.*), is to arrange for the payment of it to the satisfaction of the creditor; thus, agreeing for securing the debt is compounding for it in this meaning. *Robs. Bank.* 145.

§ 3. **Compounding felony, or penal action.**—In criminal law, to compound a felony is to enter into an agreement, for a valuable consideration, not to prosecute a person for felony, or to show him favor in a prosecution, as where a person takes back goods which have been stolen from him, upon agreement not to prosecute. It is a misdemeanor (*q. v.*) (4 Steph. Com. 232, 234.) It is also a misdemeanor to compound an action or information under a penal statute without leave of the court. Stat. 18 Eliz. c. 5; Steph. Crim Dig. 94.

COMPOUND, (a debt). 2 Johns. (N. Y.) 405, 408.

COMPOUND DEBTS, (in power of attorney). 1 Taunt. 347.

—— (power to, by assignee). 4 Paige (N. Y.) 23, 41.

COMPOUND HOUSEHOLDER.—By the Stat. 59 Geo. III. c. 12, § 19, reciting that

the payment of poor's rates was greatly evaded by houses being let out in separate apartments or for short terms, it was enacted that it should be lawful to rate the owners of such houses instead of the occupiers. As the effect of this was to keep the names of the occupiers off the rate-books, and thus deprive them of their municipal and parliamentary franchise, the Stats. 14 and 15 Vict. c. 14, and 21 and 22 Vict. c. 43, enacted that such occupiers should have the same privileges as if they were themselves rated to the relief of the poor, provided that the rates were paid either by them or the owner. Such persons are called "compound householders." *See, also*, Stats. 30 and 31 Vict. c. 102; 32 and 33 Vict. c. 41; 41 and 42 Vict. c. 26, § 14.

COMPOUND INTEREST.—Interest upon interest, *i. e.* when the interest of a sum of money is added to the principal, and thus bears interest itself, thus becoming a sort of secondary principal. *See* INTEREST.

COMPOUND INTEREST, (defined). 11 Conn. 487.

— (what constitutes in an account current). 3 Hen. & M. (Va.) 89.

— (what is not). 1 N. H. 179, 183; 5 Paige (N. Y.) 98, 103.

— (taking of, not usury). 1 Wend. (N. Y.) 521; 8 Wheel. Am. C. L. 257.

COMPOUND OFFENCES, (in crimes act). 48 Iowa 370.

COMPOUNDER.—In Louisiana, the maker of a composition, generally called the "amicable compounder."

COMPOUNDING A FELONY.—*See* COMPOUND, § 3.

COMPOUNDING A FELONY, (what constitutes). 16 Mass. 91; 5 N. H. 553.

COMPOUNDING A POPULAR ACTION, (defined). 2 Johns. (N. Y.) 406.

COMPRA Y VENTA.—In Spanish law, purchase and sale. *See* Partid. pt. 3, tit. xviii. 11, 56 *et seq.*

COMPRINT.—A surreptitious printing of another bookseller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal.—*Wharton. See* COPYRIGHT.

COMPRISED, (in a statute). L. R. 5 H. L. 656.

COMPRIVIGNI.—In the civil law, children by a former marriage, (individually called *privigni*, or *privignæ*), considered relatively to each other. Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other.—*Burrill.*

COMPROMISE.—An arrangement arrived at, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms, having regard to the uncertainty they are in regarding the facts, or the law and the facts together.—*Brown. See* ACCORD AND SATISFACTION; COMPOUND.

COMPROMISE, (offer to, what is). 5 Rawle (Pa.) 134, 136.

— (offer to, rule concerning). 12 Pet. (U. S.) 84.

COMPROMISSARIUS.—An arbitrator.

Compromissarii sunt judices (Jenk. Cent. 128): Arbitrators are judges.

COMPROMISSUM.—A submission to arbitration.

COMPTE ARRETE.—An account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated. 9 La. Ann. 484.

COMPTROLLER.—

§ 1. **In English law.**—One who observes and examines the accounts of collectors of public money; an officer of the royal household.

§ 2. **In American law.**—A national, State, or municipal officer, charged with certain duties respecting the financial affairs of the power appointing him,

COMPTROLLER IN BANKRUPTCY.—An officer in England, whose duty it is to receive from the trustee in each bankruptcy his accounts and periodical statements showing the proceedings in the bankruptcy, and also to call the trustee to account for any misfeasance, neglect, or omission in the discharge of his duties. Robs. Bank. 13; Bankr. Act, 1869, § 55.

COMPULSION.—*See* COERCION; DURESS; UNDUE INFLUENCE.

COMPULSORY.—In ecclesiastical procedure, a compulsory is a kind of subpoena to compel the attendance of a witness. (Phillim. Ecc. L. 1258.) As to compulsory pilotage, *see* PILOTAGE; and as to compulsory powers, *see* POWER.

COMPULSORY PAYMENT, (what is). 7 Barn & C. 73, 84.

COMPURGATOR.—One who, by oath, justifies another's innocence. The *compurgatores* mentioned in Anglo-Saxon records, have been supposed to be the origin of trial by jury. (Com. Abr.)—*Du Cange.*

COMPUTATION.—The true and indifferent construction of time, so that neither the one party shall do wrong to the other, nor the determination of times referred at large, be taken one way or other, but computed according to the just censure of the law.—*Termes de la Ley*.

COMPUTO, COMPUTUS.—A writ to compel a bailiff, receiver, or accountant, to yield up his accounts, founded on the Stat. of Westminster II. c. 12. It also lies against guardians. (*Reg. Orig.* 135.) The rule to compute is abolished by Com. Law Pro. Act, 1852, § 92.

CON BUENA FE.—In Spanish law, with (or in) good faith. White New Recop., b. 2, tit. 2, ch. 8.

CONACRE.—In Irish practice, the payment of wages in land, the rent being worked out in labor at a money valuation.—*Wharton*.

Conatus quid sit, non definitur in jure (2 Buls. 277): What an attempt is, is not defined in law.

CONCEAL. (defined). 57 Me. 334, 339.

— (identical with "harbor," in fugitive slave laws). 3 McLean (U. S.) 631, 643; 26 Ga. 593.

— (distinguished from "harbor," as respects fugitive slaves). 24 Ala. 71.

— (in a statute). 3 McLean (U. S.) 631; 1 Mas. (U. S.) 1.

— (in statute of limitations). 27 Ind. 429.

CONCEALED, (in a statute). 12 Wheat. (U. S.) 486, 487, 493.

— (not synonymous with "lying in wait"). 55 Cal. 207.

— (when real property deemed to be). 4 Cush. (Mass.) 448, 453.

CONCEALED WEAPONS, (defined). 31 Ala. 387.

CONCEALED WITH INTENT TO AVOID PROCESS, (in attachment act). 15 Wend. (N. Y.) 461, 462.

CONCEALER.—In English law, concealers are persons who, having obtained grants from the crown of all "concealed" or "forfeited lands" within a parish or other area, proceed to bring actions against and otherwise harass the persons or bodies holding lands upon charitable trusts connected with church purposes. Thus, by letters-patent under the great seal, dated at Gorhamberge, the 24th of July, 1570, (12 Eliz.) her majesty promised to grant to Sir Thomas Wentworth, Knight, Lord Wentworth, . . . all and so many of all such her majesty's lordships, manors and other hereditaments and advowsons to the same belonging within the realm of England and the dominions of the same, as then or at that time were concealed, subtracted or unjustly detained from her majesty. (*Attorney-General v. Webster*, L. R. 20 Eq. p. 484.) Such grants are not usual at the present day.

CONCEALING BIRTH.—Endeavoring to conceal the birth of a child by any secret disposition of its dead body, is a misdemeanor pun-

ishable in England by two years' imprisonment with hard labor, (*Steph. Crim. Dig.* 155; *Russ. Cr.* 1; *Stat.* 24 and 25 Vict. ch. 100, § 60;) and in this country by short terms of imprisonment varying somewhat in the different States.

CONCEALING BIRTH, (in a statute). 1 Chit. Gen. Pr. 35.

CONCEALING SMUGGLED GOODS, (liability for). 1 *Crompt. & J.* 220.

CONCEALING STOLEN GOODS, (is a stealing). 5 Binn. (Pa.) 617, 630.

CONCEALMENT.—The failure of a party to a contract to disclose a fact relating to it.

§ 1. **Simple.**—As a general rule, simple concealment, or rather non-disclosure, has no effect on the validity of the contract, (*New Brunswick, &c., Co. v. Conybeare*, 9 H. L. Cas. 711,) but in certain cases it has. Thus, in the contract of marine insurance, concealment of a material fact, though made without any fraudulent intention, makes it voidable at the insurer's election. *Maud & P. Mer. Sh.* 398; *Smt. Merc. L.* 394. See **INSURANCE**.

§ 2. **Fraudulent.**—Willful or fraudulent concealment is where the concealment amounts to fraud (*q. v.*) This occurs where a person has been induced to enter into a contract or the like by means of the concealment by the other party of a fact of which he was aware, and which if disclosed would have prevented the first party from entering into the contract. The effect of fraudulent concealment is to make the contract voidable at the option of the party deceived. *Central Ry. Co. of Venezuela v. Kisch*, L. R. 2 H. L. 120; *Oakes v. Turquand*, *Id.* 344.

§ 3. **Active** concealment is where one party takes means to conceal a defect, or otherwise prevent the other party from learning a material fact; or makes a statement true in terms as far as it goes, but keeps silence as to other things which if disclosed would alter the whole effect of the statement, so that what is in effect told is a half-truth, equivalent to a falsehood; or allows the other party to proceed on an erroneous belief to which the acts of the concealing party have contributed. (*Poll. Cont.* 473; *Benj. Sale* 384; *Peek v. Gurney*, L. R. 6 H. L. 392; *Keates v. Earl Cadogan*, 10 C. B. 591; 20 L. J. C. P. 76.) The general rule is, that where a person is induced to enter into a contract by active conceal-

ment of a material fact, he is entitled to rescind the contract, and (in some cases) to bring an action for misrepresentation or deceit. *Peek v. Gurney*, L. R. 6 H. L. 391, 403.

§ 4. **Concealment of title deeds, &c.**—Concealment is also in some cases a criminal offence; as where a vendor or mortgagor of real or personal property fraudulently conceals any material title deed or incumbrance affecting the property. Such an offence is, in some jurisdictions, a misdemeanor, punishable with imprisonment and hard labor. Stats. 22 and 23 Vict. ch. 35, § 24; 23 and 24 Vict. ch. 38, § 8. See FRAUD; MISREPRESENTATION.

CONCEALMENT, (defined). 3 *Houst. (Del.)* 474, 475.

—(by a debtor, of his property). 5 *Gray (Mass.)* 159.

—(of a deed). 8 *Pet. (U. S.)* 38.

—(of goods, what is not). 12 *Wheat. (U. S.)* 486.

—(of a larceny). 13 *Ind.* 324.

—(in attachment law). 1 *Biss. (U. S.)* 57; 23 *Ill.* 66; 1 *Duv. (Ky.)* 342.

—(in insurance law). 12 *Cush. (Mass.)* 416, 425.

CONCEDO.—I grant. A word used in old Anglo-Saxon grants, and in statutes merchant.

CONCEPTUM.—Theft, where the property stolen was found upon the thief in the presence of witnesses.

CONCERNS, (devise of all). *Cas. t. Talb.* 236.

CONCERNS, ADJUST ALL, (power to, construed). 8 *Wend. (N. Y.)* 494, 498.

CONCESSI.—I have granted. A word anciently of frequent use in conveyances, but in modern times supplanted by the English word "grant." In the plural form, *concessimus*, it appears in *Magna Charta*.

CONCESSI, (when implies a warranty). 2 *Cai. (N. Y.)* 138, 194.

CONCESSIO.—In old English law, a grant.

Concessio per regem fieri debet de certitudine (9 *Co.* 46): A grant by the king ought to be made from certainty.

Concessio versus concedentem latam interpretationem habere debet (*Jenk. Cent.* 279): A grant ought to have a liberal interpretation against the grantor.

CONCESSION.—A grant; a privilege granted by a government to do certain things within its territory, as to construct canals, railways, &c.; French and Spanish grants in Louisiana.

CONCESSIT SOLVERE.—A form of action of debt on simple contract which lies by custom in the Mayors' Courts of London and Bristol; the declaration is to the effect that the defendant on a fictitious date, in consideration of divers fictitious sums of money before that time due and owing from him to the plaintiff, and then in arrear and unpaid, granted and agreed to pay (*concessitolvere*) to the plaintiff the sum sued for, but has not done so. (1 *Wms. Saund.* 94 (*Turbill's Case*). See the form, *Brand. For. Att.* 159.) It is said to have the advantage of being "a more comprehensive count than almost any other," (*Brand. For. Att.* 76; *Cand. Pr.* 139;) and is therefore usually adopted in proceedings in foreign attachment, in which most of the other steps are equally full of fictions. See FOREIGN ATTACHMENT.

CONCESSOR.—A grantor.

CONCESSUM.—Granted; conceded; allowed. A term of frequent occurrence in the old books, denoting the assent of the court to the doctrine or position laid down on the argument of a cause.—*Burrill*.

CONCESSUS.—A grantee.

CONCILIUM.—(1) A council. (2) In proceedings on a writ of error in a criminal case, in England, a rule directing the case to be put down in the paper for argument is obtained as soon as the joinder in error is filed. This rule is called a "rule for a concilium" (*Archb. Cr. Pl.* 205; *dies concilii*, a day to hear counsel.) Formerly a similar rule was required in a civil action when issue had been joined on demurrer. *Tidd Pr.* 737. See JOINDER; WRIT OF ERROR.

CONCILIUM ORDINARIUM.—In Anglo-Norman times, an executive and residuary judicial committee of the *Aula Regis* (*q. v.*)

CONCILIUM REGIS.—An ancient English tribunal, existing during the reigns of Edward I. and Edward II., to which was referred cases of extraordinary difficulty. *Co. Litt.* 304.

CONCIONATORES.—Common councilmen, freemen.

CONCLUDE.—To bar or estop (*q. v.*) *Co. Litt.* 37 a, 170 a.

CONCLUDE, (in a statute). 2 *Mass.* 470.

CONCLUDED, (agreement must be, to become a contract). 3 *Wheel. Am. C. L.* 340.

CONCLUSION.—

§ 1. **Generally**.—An irrebuttable presumption or rule of law (see PRESUMPTION); an estoppel (*q. v.*)

§ 2. **Of pleading**.—In the common law practice, that part of a pleading by which the party offered that the issue raised should be tried by a jury was called a "conclusion to the country." *Steph. Pl.* (5 edit.) 79. See COUNTRY.

§ 3. Under the old English admiralty practice, a party who had a right to plead further, might, if he thought fit, file what was called a "conclusion," by which he denied the statements in the preceding pleading, and prayed that the pleadings might be concluded. (Wms. & B. Adm. 249.) It answered to what is now called a "joinder of issue" (q. r.).

§ 4. Of indictment. —The last phrase in an indictment, such as "contrary to the form of the statute," &c., or "contrary to the peace and dignity," &c.

CONCLUSION TO THE COUNTRY.—See CONCLUSION, § 2.

CONCLUSIVE, (in an agreement). 4 Yeates (Pa.) 551.

—— (in a statute). 1 Wheel. Cr. Cas. 381, 383.

CONCLUSIVE AND FINAL, (in a rule of reference). 5 Binn. (Pa.) 387, 389.

CONCLUSIVE EVIDENCE.—Evidence so weighty and convincing that it cannot be explained or contradicted by any other evidence; evidence which determines the question at issue.

CONCLUSIVE EVIDENCE, (defined). 16 Abb. (N. Y.) Pr. 301; 6 Mass. 280; 1 Robt. (N. Y.) 121.

CONCLUSIVE IN THE PREMISES, (in a statute). 1 Wend. (N. Y.) 370, 374.

CONCLUSIVE PRESUMPTION.—An irrebuttable presumption. "Conclusive presumptions are rules determining the quantity of evidence requisite for the support of any particular averment, which is not permitted to be overcome by any proof that the fact is otherwise." 1 Greenl. Ev., § 15.

CONCORD.—(1) An agreement entered into between two or more persons, upon a trespass having been committed, by way of amends or satisfaction for the trespass. (2) In that species of conveyance which was formerly in use, called a "fine," the word "concord" also occurs; and here it signifies an agreement, called the *finis concordie*, between the parties, who are levying the fine of lands one to another, how and in what manner the lands shall pass; this concord is usually an acknowledgment from the deforciant (i. e. defendants) that the lands in question are the right of the complainant; and from this acknowledgment or recognition of right, the party levying the fine is called the "cognizor," and he to whom it is levied the "cognizee."—Brown.

CONCORDAT.—A treaty or public act of agreement between the pope and any prince, relative to some collation of benefices.

CONCORDIA.—In old English law agreement, unanimity.

CONCORDIA DISCORDANTIUM CANONUM.—See DECRETUM GRATIANI.

Concordia parvæ res crescunt et opulentia lites (4 Inst. 74): Small means increase by concord and litigations by opulence.

CONCUBARIA.—A fold, pen, or place where cattle lie.—Cowell.

CONCUBEANT.—Lying together.

CONCUBINAGE.—(1) Cohabitation of a man with a woman not his lawful wife. (2) An inferior marriage among the Romans. (See CONCUBINATUS.) (3) An exception against a woman suing for dower, on the ground that she was the concubine and not the wife of the man of whose land she seeks to be endowed. Brit. c. 107.

CONCUBINAGE, (in statute of crimes). 23 Mich. 118.

CONCUBINATUS.—A natural marriage, as contradistinguished from the *juste nuptiæ*, or *justum matrimonium*, the civil marriage.—Bouvier.

CONCUBINE.—(1) A woman who cohabits with a man to whom she is not married. (2) A sort of inferior wife, among the Romans, upon whom the husband did not confer his rank or quality.

CONCUR.—A term used in Louisiana to denote a claim of a person against an insolvent's estate, along with other claimants. 6 Mart. (La.) N. s. 460.

CONCURATOR.—In the civil law, a joint, or co-curator, or guardian.

CONCURRENCE.—In the French law, equality of rights or privileges of several persons over the same thing, e. g. the right of two judgment-creditors, whose judgments were simultaneously rendered, to be paid out of the proceeds of land bound by such judgments.

CONCURRENCE, (of a voter). 59 Tenn. 262, 278.

CONCURRENT.—Acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous.

CONCURRENT JURISDICTION.—The jurisdiction of several different tribunals each authorized to deal with the same subject-matter at the choice of the suitor.

CONCURRENT LEASE, (synonymous with "new"). 1 Wm. Bl. 617, 625.

CONCURRENT WRIT.—In English practice, a copy of the original writ of summons issued in an action, the very date being the same; the seal bears the word "concurrent" on it, and shows the date when the concurrent seal was impressed (*i. e.* issued). A concurrent writ is frequently issued for service out of the jurisdiction.—*Brown*.

CONCURSO, (suit in, defined). 2 La. 350, 355.

CONCURSUS.—In the civil law, (1) a running together; a collision, as *concursum creditorum*, a conflict among creditors. (*See* **CONCUR.**) (2) a concurrence, or meeting, as *concursum actionum*, concurrence of actions.

CONCUSSIO — CONCUSSION.—In the civil law, extortion by threats of violence.

CONDEMN.—(1) To sentence, or find guilty; (2) to take or set apart for public use, under the exercise of the right of eminent domain; (3) to declare a vessel a lawful prize, or to declare her unfit for service.

CONDEMNATION.—The act of a court of competent jurisdiction in adjudging a prize or captured vessel to have been lawfully captured. The effect of a condemnation is to vest the property in the captor, unless the court, either before or after condemnation, orders it to be sold or delivered up on bail, in which case the proceeds of sale or appraised value take the place of the property itself. *See* **CAPTURE**; **CONDEMN**; **PRIZE COURTS**.

CONDEMNATION MONEY.—The party who fails in a suit or action is sometimes said to be condemned in the action, whence the damages to which such failure has made him liable used to be frequently called "condemnation money."

CONDEMNATION MONEY, (in an appeal bond). 6 Blackf. (Ind.) 8.

CONDESCENDENCE.—In the Scotch law, a part of the proceedings in a cause, setting forth the facts of the case on the part of the pursuer or plaintiff.

CONDICTIO.—In the Roman law, a personal action, the following being the principal kinds:

Condictio certi.—An action upon a distinct or certain promise, or stipulation, to do a thing named.

Condictio ex lege.—An action where a new law provided a remedy but prescribed no particular form of action for its enforcement.

Condictio furtiva, (or *rei furtivæ*).—An action for the recovery of stolen property, against the thief or his heir.

Condictio indebitati.—An action to recover back money paid by mistake, similar to our action for money received.

Condictio sine causa.—An action to recover back a thing given or promised without consideration, or where the consideration had failed.

CONDITIO.—A condition (*q. v.*), used in such phrases as—

Conditio beneficiæ, quæ statum construit, benigne secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, stricte secundum verborum proprietatem accipienda (8 Co. 90): A beneficial condition, which creates an estate, ought to be construed favorably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.

Conditio dicitur, cum quid in casum incertum qui potest tendere ad esse aut non esse, confertur (Co. Litt. 201): It is called a condition, when something is given on an uncertain event, which may or may not come into existence.

Conditio illicita habetur pro non adjecta: An unlawful condition is deemed as not annexed.

Conditio præcedens adimpleri debet priusquam sequatur effectus (Co. Litt. 201): A condition precedent must be fulfilled before the effect can follow.

CONDITION.—**LATIN:** *conditio*.

§ 1. **In general.**—A condition is a declaration or provision which makes the existence of a right dependent on the happening of an event, or the performance of an act, and the right is then called conditional, as opposed to an absolute right. Thus, if A. leaves a legacy in the following form: "I give \$100 to B. if he shall act as my executor," the legacy is conditional, because B.'s right to the \$100 is dependent on the fulfillment of the condition, *i. e.* on his acting as executor.

Conditions are either true or apparent.

§ 2. **A true condition** is where the event on which the existence of the right depends is future and uncertain. (Savigny, System, iii. 121; "I give Blackacre to A. if B. shall die without leaving children.")

§ 3. **Apparent conditions**, or conditions merely in form, are (1) where the event, though unascertained, is not future, but is either happening at the time the condition is created ("if A. is now living"), or has already happened ("if A. is dead"); (2) where the event, though future, is not uncertain, either because it must neces-

sarily happen ("I give Blackacre to A. if B. shall die"), or because its happening was always impossible (*infra* § 8); (3) where the condition is a mere repetition or expression of something implied by law from the nature of the right; as if an estate is given to A. in tail, and if A.'s issue fail, then to B.: here the words, "if A.'s issue fail," do not create a condition, being merely an unnecessary expression of what is implied in A.'s estate tail, which can only last so long as he has issue. Fearné Rem. 242.

With reference to their creation, conditions are either express or implied.

§ 4. **An express condition**, or condition "in deed," is one "expressed by the partie in legall termes of law" (Co. Litt. 201a; Shep. Touch. 117), as in the examples given above.

§ 5. **An implied condition**, or condition "in law," is one "created by law without any words used by the partie," (Shep. Touch. 117,) whether the parties had it in their minds at the time or not; thus, in every policy of marine insurance, a condition or warranty that the vessel is seaworthy is implied in law. Sm. Merc. L. 377. Littleton (§§ 378 *et seq.*) calls conditional and collateral limitations "conditions in law." See LIMITATION; WARRANTY.

With reference to their effects, conditions are of various kinds:

§ 6. **A condition precedent** is one which delays the vesting of the right until the event happens; thus, if I give \$100 to A. if he shall act as my executor, A.'s right to the legacy is dependent on a condition precedent, because the performance of it must precede his receipt of the \$100.

§ 7. **A condition subsequent** is where the event is to destroy or divest an existing right; thus, if I give an annuity of \$100 to C. so long as she shall remain my widow this creates a condition subsequent, because the performance of it is subsequent to the vesting of the right.

§ 8. **Possible—impossible.**—Conditions are either possible or impossible. A condition may be impossible either *ab initio* or by matter subsequent, and in the latter case the impossibility may arise from the act of the person who is to perform the condition, or of the person for whose benefit

it is to be performed, or of a stranger, by the act of God, (*e. g.* death,) (Co. Litt. 206a,) by *vis major*, or by a combination of these. Impossibility is either physical, ("If A. go from the church of St. Peter in Westminster to the church of St. Peter in Rome within three hours," *Id.* 206b; Britt. 62b,) logical, ("I give my land to my executors if they shall sell it," Dig. xl. 4, fr. 39; Britt. 62b,) or legal, where the act required is legally inoperative, ("If A. shall make a valid will during his minority." See Co. Litt. 206b.)

§ 9. **Independent—dependent—mutual.**—Conditions are independent when they must be performed without reference to one another, dependent, when one has to be performed before the other need be performed, and mutual, when one party need not perform his condition unless the other is willing and ready to perform his. Leake Dig. 345; Jones *v.* Barkley, 2 Doug. 684.

§ 10. **Illegal.**—A condition is illegal when its performance is forbidden by law, ("If you kill such a man I will give you ten shillings," Britt. 62b,) or where it is against some maxim or rule of law, (as if I make a conveyance to a man upon condition that he shall not alien the land, this condition is repugnant and against law, and the grantee takes the land absolutely. Co. Litt. 206b). These divisions are important with reference to the effect of non-performance of the condition; thus, as a general rule, if a condition precedent is illegal or impossible, the right does not vest at all, while an illegal condition subsequent has no effect. (Wats. Comp. Eq. 1107.) Again, if a condition precedent, which was originally possible, becomes impossible by the act of the person intended to be benefited, the right vests as if the condition had been performed. (Co. Litt. 206b; Wats. Comp. Eq. 1107. See Litt. §§ 355 *et seq.*) As to conditions in restraint of marriage, see RESTRAINT OF MARRIAGE.

§ 11. **Conditions annexed to realty.**—In the old writers, condition is used in the technical sense of a condition annexed to realty, which Coke defines as "a qualitie annexed by him that hath estate, interest, or right to the same, whereby an estate, &c., may either be defeated or enlarged or

created upon an uncertain event." (Co. Litt. 201a.) (As to estates on condition, *see* ESTATE.) Formerly, "condition" included both conditions in the strict sense, and what are now more commonly called "conditional limitations," the distinction being that when a freehold estate is limited to cease on a condition, and the condition happens, the person in whose favor the condition is reserved must make an entry or claim, otherwise the estate continues; in the case of a conditional limitation, on the other hand, the estate determines *ipso facto* on the happening of the event, and the remainder or reversion takes effect in immediate possession. (Co. Litt. 214b; Fearn Rem. 15; Leake Dig. 223. *See* LIMITATION.) If, however, a leasehold estate is granted on condition, it determines *ipso facto* on breach of the condition without any entry being required, unless an entry is expressly stipulated. Co. Litt. 214b; Leake Dig. 226.

§ 12. **Various other kinds of conditions.**—Conditions are also called "affirmative," when positive; "collateral," when they require the performance of a collateral act; "compulsory," when express or imperative; "consistent," when in agreement or accord with other parts of the transaction out of which they arise; "copulative," when they are the aggregate of separable conditions, all of which must be performed; "covert," when implied (*see supra* § 5); "disjunctive," when they require one of several things to be done; "inherent," when annexed to something reserved in the grant; "insensible," or "repugnant," when inconsistent with or opposed to the original act; "positive," when they require the happening of a contemplated event; "restrictive," when they restrain or forbid the doing of an act; "single," when the performance of a single act only is required; "void," when of no effect or validity.

§ 13. **Assignment of conditions.**—Formerly, a condition was not assignable in any way, but by Stat. 32 Hen. VIII. c. 34, a condition annexed to a reversion passes on an assignment of the reversion. Wms. Real Prop. 246. *See* ENTRY.

As to the apportionment of conditions, *see* APPORTION, § 4.

§ 14. **Conditions of sale.**—Condition is also used as equivalent to "restriction" or "stipulation," *e. g.* conditions of sale (*q. v.*)

§ 15. **Registration of conditions.**—The English Land Transfer Act, 1875, provides for the registration, as annexed to registered land, of conditions that the land is not to be built on or put to a particular use, or of any other conditions running with or annexed to land. § 84. *See* COVENANT.

§ 16. **Conditions in the French law.**—In French law, the following peculiar distinctions are made: (1) A condition is *casuelle*, when it depends on a chance or hazard; (2) a condition is *potestative*, when it depends on the accomplishment of something which is in the power of the party to accomplish; (3) a condition is *mixte*, when it depends partly on the will of the party and partly on the will of others; (4) a condition is *suspensive*, when it is the future and uncertain event, or present but unknown event, upon which an obligation takes or fails to take effect; (5) a condition is *resolutoire*, when it is the event which undoes an obligation which has already had effect as such.

CONDITION, (what words create). 6 Halst. (N. J.) 244; 8 Cow. (N. Y.) 295, 296; 8 Com. Dig. 449; Cro. Car. 128; Cro. Eliz. 242.

— (in a contract, when means "terms"). 4 Watts & S. (Pa.) 302.

— (in a conveyance, defined). 53 Me. 211.

— (in a devise). 109 Mass. 1.

— (in a devise, when subsequent). 3 Pet. (U. S.) 346, 374.

— (in a devise, when precedent). 9 Wheat. (U. S.) 325.

— (in a will). 5 Barn. & C. 720; L. R. 6 H. L. 1.

— (legacy on). 6 Paige (N. Y.) 383.

CONDITION IN DEED.—*See* CONDITION, § 4.

CONDITION IN LAW.—*See* CONDITION, § 5.

CONDITION OF A BOND, (release of). 1 Ld. Raym. 515, 521.

CONDITION PRECEDENT.—*See* CONDITION, § 6.

CONDITION SUBSEQUENT.—*See* CONDITION, § 7.

CONDITION, UPON, (in an agreement). 1 Chit. Gen. Pr. 494.

— (in a will). 24 Wend. (N. Y.) 146, 148; Cro. Eliz. 919.

CONDITIONAL.—Something which depends upon, or is granted subject to the happening or performance of a condition (*q. v.*)

CONDITIONAL CREDITOR.—A civil law term for a creditor whose right of action is a future one, or one in expectancy.

CONDITIONAL FEE.—An estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female, whether lineal or collateral. It was called a conditional fee, by reason of the condition expressed or implied in the donation of it, that if the donee died without such particular heirs, the land should revert to the donor. But on the passing of the Statute of Westminster II. commonly called the "*Statute De Donis*," the judges determined that the donee had no longer a conditional fee-simple, which became absolute the instant issue was born, but they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a "fee-tail," and vesting in the donor the ultimate fee-simple of the land expectant on the failure of issue, which expectant estate is what we now call a "reversion." And hence it is that tenancy in fee-tail is by virtue of the Statute *De Donis*. (2 Bl Com. 112.)—*Wharton*.

CONDITIONAL LEGACY.—A bequest whose existence depends upon the happening or not happening of some uncertain event, by which it is either to take place or to be defeated. 1 Rop. Leg. (3 edit.) 645.

CONDITIONAL LIABILITY, (in bankrupt law). 72 Ill. 435.

CONDITIONAL LIMITATION.—*See* LIMITATION.

CONDITIONAL LIMITATION, (defined). 16 Me. 158; 3 Gray (Mass.) 143; 1 Steph. Com. 278, 503.

CONDITIONAL OBLIGATION.—(1) An obligation subject to a condition.

* The various matters provided for in the conditions of sale in England, are principally the following: (1) The conduct of sale, the biddings, &c., and this condition is to state that the property is subject to a reserved price (if the fact is so), or that the vendor reserves the right to bid (if that is so); (2) the deposit money, and its forfeiture in case of purchaser's default; (3) the valuation or other appraisal of fix-

(2) In Louisiana, an implied obligation. *See* 2 La. Ann. 989, 991.

CONDITIONAL SALE.—A sale which is made on condition, upon the performance of which the passing of title depends.

CONDITIONAL SALE, (defined). 44 Mo. 429. — (what is). 57 Ala. 53; 2 Hill (N. Y.) 326.

— (distinguished from "mortgage"). 9 Ala. 24.

CONDITIONAL STIPULATION.—A stipulation to perform an act upon condition of the happening of some event, or the performance of some act by the other party.

CONDITIONED, (is a word of condition). 8 Barn. & C. 308, 315.

CONDITIONED AND STIPULATED, (in an agreement). 8 Barn. & C. 316.

Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium (Lofft 644): Some conditions are odious; but those chiefly which are against marriage and commerce.

CONDITIONS OF SALE.—When property is to be sold by auction, the terms on which the purchaser is to take it are usually specified in a document called the "conditions of sale," copies of which are distributed among intending bidders. In the case of land, houses, &c., the conditions are usually printed with the particulars of sale (*q. v.*); in the case of furniture, books, &c., they are usually printed at the beginning of the catalogue.

Conditions of sale of real property generally contain elaborate provisions as to the title which the purchaser is to accept, and the means by which it is to be proved. (Dart Vend. 114, 124 *et seq.*; 1 Dav. Prec. Conv. 505.) On the conclusion of the sale the purchaser signs a memorandum endorsed on the conditions, which thus form a contract of sale.* *See* ABSTRACT OF TITLE; TITLE.

tures, &c.; (4) the abstract of title to be furnished, the commencement (or "root") of title being specified, and exclusion of investigation of prior title; (5) the exclusion of inquiries after possible dowresses; (6) the evidence of recitals, &c.—usually all recitals in deeds, &c., twenty years old being made evidence, unless their inaccuracy or falsehood is otherwise demonstrated; (7) the expenses of investigating title

CONDITIONS PRECEDENT AND SUBSEQUENT, (defined). 67 Me. 295; 3 Wheel. Am. C. L. 194; 2 Ves. & B. 312, 318.

CONDITIONS SUBSEQUENT, (defined). 31 Mich. 43.

CONDOMINIA.—In the civil law, co-ownerships or limited ownerships, such as *emphyteusis*, *superficies*, *pignus*, *hypotheca*, *ususfructus*, *usus* and *habitation*. These were more than mere *jura in re aliena*, being portion of the *dominium* itself, although they are commonly distinguished from the *dominium* strictly so called.—*Brown*.

CONDONACION.—A Spanish law term, signifying the remission of a debt.

CONDONATION.—Forgiveness of a conjugal offence, with full knowledge of all the circumstances; it may be express, or implied from the conduct of the offended party, and its effect is to restore the offending person to the same position which he or she held before the offence was committed, so that the injured person cannot subsequently seek redress for it by proceedings for a divorce or judicial separation. Browne Div. 94. See REVIVAL.

CONDONATION, (defined). 36 Ga. 286; 19 Abb. (N. Y.) Pr. 90; 2 Robt. (N. Y.) 694.

—(of adultery, defined). 4 Paige (N. Y.) 432, 436, 469.

—(of adultery, effect of, and how proved). 14 Wend. (N. Y.) 637.

CONDUCT MONEY.—Money given to a witness to defray his expenses of coming to, staying at, and returning from the place of trial. A witness is entitled to decline to attend or be sworn until his expenses have been paid or tendered to him. Archb. Pr. 322.

CONDUCTI ACTIO.—A civil law action in favor of the hirer (*conductor*) against the letter to hire (*locator*) of a thing.

CONDUCTING OR DRIVING, (cattle). L. R. 1 Q. B. 259.

CONDUCTIO.—A bailment or letting to hire.

CONDUCTOR.—A hirer of a thing.

CONDUCTUS.—A thing hired.

CONE AND KEY.—A woman at fourteen or fifteen years of age may take charge of her house and receive cone and key (*i. e.* keep the accounts and keys).—*Cowell*. Said by Lord Coke to be cover and key, meaning that at that age a woman knew what in her house should be kept under lock and key. (2 Inst. 203.)—*Bonvier*.

CONFARREATIO.—In Roman law, a sacrificial rite resorted to by marrying persons of high patrician or priestly degree, for the purpose of clothing the husband with the *manus* over his wife; the civil modes of effecting the same thing being *coemptio* (formal) and *usus mulieris* (informal).—*Brown*.

CONFECTIO.—The making and execution of a charter, or other written instrument. 5 Co. 1.

CONFECTIONERY, (in an indictment). 125 Mass. 202.

CONFEDERACY.—

§ 1. In political and popular language, a combination of persons for any purpose.

§ 2. In law, it has the technical meaning of a combination for maintenance, as prohibited by the ordinance of conspirators, (*see CONSPIRACY*), while the term "conspiracy" was appropriated to false and malicious indictments. Wright Cr. Consp. 15.

§ 3. In equity pleading, a formal part of plaintiff's bill charging the combining together of the defendants to injure the plaintiff.

CONFEDERATION.—A league or compact for mutual support, particularly of princes, nations, or states. Such was the colonial government during the revolution. See ARTICLES OF CONFEDERATION.

CONFERENCE.—

§ 1. Generally.—A meeting between counsel and attorney or solicitor, (with or without the client) to discuss a question arising out of the business in hand.

and making searches; (8) the ascertainment of the identity of the property sold with that referred to in the abstract of title; (9) the provisions entitling or disentitling to compensation for errors in description or acreage of property; (10) the date for completion by payment of residue of purchase money, and execution of a proper deed of assurance; (11) the receipt of rents and payment of outgoings, by whom to be borne, and as from what date the purchaser to be entitled and liable thereto respectively, with a provision for payment of interest by purchaser

on his unpaid purchase money where possession not taken at the date appointed; (12) the delivery up of title deeds, or arrangements for their custody and production by vendor; (13) the time for making objections to and requisitions upon the title, with a provision rescinding contract at vendor's option if he is unable to reasonably satisfy the purchaser, and the latter insists on being satisfied, and (14) the forfeiture of deposit, and right of resale at purchaser's expense, when the purchaser is in default in not completing the contract.—*Brown*.

§ 2. In parliamentary practice, a conference is a mode of communicating important matters by one legislative house to the other, more formal and ceremonious than a message, and sometimes better calculated to explain opinions and reconcile differences. By a conference both houses are brought into direct intercourse with each other, by deputations of their own members; and so entirely are they supposed to be engaged in it, that while the managers are at the conference, the deliberations of both houses are suspended. (May Parl. Pr. 451.) The most usual occasion of a conference, is where one house is unable to agree to the amendments made by the other in a bill pending. Conference committees are frequently appointed by the two houses of congress for this purpose, but the deliberations of the two houses are not suspended during the sessions of such committees.

§ 3. In French law.—A similarity between two or more enactments, or legal systems.

§ 4. In international law.—Oral arrangements of a diplomatic character between representatives of two or more nations, sometimes resorted to in order to save the delay incident to written communications.—*Bouvier*.

CONFESSING ERROR.—The affirmative plea to an assignment of error.

CONFESSIO.—A confession (*q. v.*)

Confessio facta in judicio omni probatione major est (Jenk. Cent. 102): A confession made in judgment is greater than all proof.

CONFESSIO.—

§ 1. In civil procedure, a confession is a formal admission; thus, in England, where a defendant in an action alleges any ground of defence which has arisen after the commencement of the action (*e. g.* the bankruptcy of the plaintiff), the plaintiff may confess the defence, *i. e.* admit its validity, by delivering a confession of defence, which is in the nature of a pleading. (Rules of Court, xx. 3.) Under the old practice, this was called a "confession of plea." (Day's C. L. P. Acts 499.) Such a confession puts a stop to the action, and entitles the plaintiff to his costs up to the defence or plea confessed. See *Foster v. Gamgee*, 1 Q. B. D. 666; *Newington v. Levy*, L. R. 5 C. P. 607, 6 C. P. 130.

§ 2. Under the old practice, the defendant in an action of ejectment might confess the action, *i. e.* admit the plaintiff's claim, and so entitle him to judgment, by delivering a notice to that

effect. (Day's C. L. P. Acts 197.) Under the new practice, the same result is obtained by the defendant abstaining from delivering a defence. Rules of Court, xxix. 7. See *COGNOVIT*; *WARRANT OF ATTORNEY*.

§ 3. In criminal law, a confession is an admission of guilt, made either judicially, *i. e.* in the course of a judicial proceeding, or not. Judicial confession may operate as an estoppel, and, if plenary, is sufficient to found a conviction, as where a prisoner pleads guilty. (Best Ev. 691; Rosc. Cr. Ev. 39.) An extra-judicial confession, if made freely, is admissible as evidence, but never operates as an estoppel. Best Ev. 693; Rosc. Cr. Ev. 39.

§ 4. Confession seems originally to have been applied especially to an admission by record. Thus a villein by confession, was one who had confessed himself to be a villein in a court of record. Litt. § 175. See *APPROVE*, § 2; *PLEA*; *PLENARY*.

§ 5. As to confessions to priests, see *CONFIDENTIAL COMMUNICATIONS*, § 2.

CONFESSIO, (defined). Hob. 93.

—— (in criminal law). 30 Cal. 151.

—— (of criminal under twelve years old). South. (N. J.) 231, 240.

CONFESSIO AND AVOIDANCE.—A pleading is said to be in confession and avoidance when it confesses (*i. e.* admits) the truth of an allegation of fact contained in the preceding pleading, but avoids it (*i. e.* deprives it of effect) by alleging some new matter. Thus, if the declaration alleges a breach of contract, the defendant may confess and avoid by admitting the breach and alleging that the plaintiff has waived it; so in an action for assault the defendant may plead *son assault demesne* (*q. v.*); or if a defendant in an action on a covenant pleads a release, the plaintiff may reply in confession and avoidance that it was obtained by fraud. See *Hall v. Eve*, 4 Ch. D. 341; Sm. Act. 66. Also, *TRAVERSE*.

CONFESSIO OF DEFENCE.—See *CONFESSIO*, § 1.

CONFESSORIA ACTIO.—A civil law action to enforce a servitude.—*Burrill*.

Confessus in judicio pro judicato habetur et quodammodo sua sententia damnatur (11 Co. 30): A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.

CONFIDENCE, (defined). 2 Pa. St. 129, 133.
 — (in a devise). 19 Ves. 299; 1 Ves. & B. 313.
 — (in a will). 20 Pa. St. 268; 11 Ves. 205; 17 Id. 255.
 — (cases in which words of, were held to raise trusts). 8 Com. Dig. 997.
 CONFIDENCE GAME, (defined). 47 Ill. 468; 81 Id. 98.

CONFIDENTIAL COMMUNICATIONS.—

§ 1. **Generally.**—Communications between a party and his attorney, or between the attorney and the counsel, made during and with reference to judicial proceedings, or in anticipation or for the purposes of such proceedings. Written communications are privileged from production, and verbal communications and the contents of written communications are privileged from discovery. *See* DISCOVERY; PRIVILEGE; PRODUCTION.

§ 2. **Spiritual and medical advisers.**—The question whether communications made to spiritual advisers are privileged is one which has never been authoritatively decided, though there is (for obvious reasons) a strong leaning towards allowing the privilege (*Best Ev. 727 et seq.*); communications to medical advisers are not protected from disclosure in England (*Id. 726*), but in most, if not all of the States, such communications, when made to physicians while in attendance upon the patient and in respect to his ailment, are privileged by statute; and in a few States such communications when made to clergymen are also privileged.

§ 3. **Husband and wife.**—Communications between husband and wife are protected from disclosure, even after they are separated by divorce or death. *Best Ev. 732*; Stat. 16 and 17 Vict. c. 83. *See* PRIVILEGED COMMUNICATIONS.

CONFINEMENT, (in a statute). 53 Ala. 546.
 — (of master of vessel, by crew). 1 Cranch (U. S.) C. C. 94; 5 Mas. (U. S.) 460; Pet. (U. S.) C. C. 118; 1 Sumn. (U. S.) 168.
 CONFIRM, (in a devise). 2 Ld. Raym. 831.
 — (in friendly society act). 1 Barn. & Ad. 861, 872.
 — (in State constitution). 82 N. Y. 101.
 CONFIRM AND MAKE OVER, (in a deed, sufficient to raise a use). 18 Johns. (N. Y.) 60, 79.

Confirmare est id firmum facere quod prius infirmum fuit (Co. Litt. 295): To confirm is to make firm that which was before infirm.

Confirmare nemo potest priusquam jus ei acciderit (10 Co. 48): No person can confirm before the right shall fall to him.

Confirmat usum qui tollit abusum (Moore 764): He confirms a use who removes an abuse.

CONFIRMATIO CHARTARUM.—The Stat. 25 Edw. I., A. D. 1297. This statute, being in the form of a charter, was sealed with the king's great seal, at Ghent, in Flanders, on November 5th, as appears by a memorandum upon the roll. It gave that security to personal property which *Magna Charta* gave to personal liberty. (Barr. Ob. Stat. 173.)—*Wharton*.

CONFIRMATIO CRESCENS.—An enlarging confirmation; one which enlarges a rightful estate. *Shep. Touch. 311*.

CONFIRMATIO DIMINUENS.—The converse of *confirmatio crescens* (*q. v.*)

Confirmatio est nulla ubi donum præcedens est invalidum (Moore 764; Co. Litt. 295): There is no confirmation where the preceding gift is invalid.

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit (Co. Litt. 295b): Confirmation supplies all defects, though that which had been done was not valid at the beginning.

CONFIRMATIO PERFICIENS.—A confirmation which makes valid a wrongful and defeasible title, or makes a conditional estate absolute. *Shep. Touch. 311*.

CONFIRMATION.—

§ 1. **In conveyancing.**—"A conveyance of an estate or right in *esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased." (Co. Litt. 295b.) Thus, where a person is disseised of land and executes a deed of confirmation to the disseisor, the estate of the latter becomes absolute. (Litt. § 519. For the differences between a confirmation and a release (*q. v.*), *see* Littleton, §§ 516 *et seq.*) A confirmation is also sometimes used when there has been a previous conveyance of the property to the grantee. 1 Dav. Prec. Conv. 72. *See* ADOPT; AFFIRM; CONVEYANCE; RECTIFY.

§ 2. **In ecclesiastical law.**—The ratification by the archbishop of the election of a bishop by dean and chapter, under the king's letter missive, prior to the investment and consecration of the bishop by the archbishop. (25 Hen. VIII. c. 20.) It is undecided whether this ceremony be, in theory, ministerial or judicial, *i. e.* whether the archbishop can refuse to confirm; in practice it has been only ministerial for two centuries. (*See Queen v. Archbishop of Canterbury*, 11 Q. B. 483.)—*Wharton*.

CONFIRMATION, (defined). 3 Com. Dig. 136; 4 Cruise Dig. 82.

— (by infant, when of age). 10 Pet. (U. S.) 58, 75; 15 Mass. 220; 1 Pick. (Mass.) 203, 221; 4 Id. 48.

— (of sale of land by legislature). 2 Pet. (U. S.) 627; 10 Id. 294.

CONFIRMATION OF SALES ACT, 1862.—See MINERALS.

CONFIRMATORY LAWS, (are not unconstitutional). 9 Mass. 360; 16 Serg. & R. (Pa.) 35, 37.

CONFIRMAVI.—I have confirmed. The emphatic word in a deed of confirmation.

CONFIRMED, (shall be, in a statute). 15 Pet. (U. S.) 460.

CONFIRMED AND RATIFIED, (in a replication). 3 Maul. & Sel. 477, 482.

CONFIRMEE.—The grantee in a deed of confirmation.

CONFIRMOR.—The grantor in a deed of confirmation.

CONFISCATE, (defined). 3 Dall. (U. S.) 199, 222.

CONFISCATION.—Appropriation to the use of the State. Thus, where a State seizes property belonging to another State, or to its subjects, and appropriates it, the property so seized is said to be confiscated. Confiscation is the punishment for carrying contraband of war (*q. v.* and **PRE-EMPTION**), (Man. Int. Law 352,) or for attempting to carry supplies to a place besieged or blockaded. *Id.* 400.

Forfeiture as a punishment for smuggling, &c., is sometimes called "confiscation." See **BLOCKADE**; **CONDEMNATION**; **FORFEITURE**; **SEARCH**.

CONFITENS REUS.—An accused person who admits his guilt.

CONFLICT OF LAWS.—See **INTERNATIONAL LAW**.

CONFLICT OF PRESUMPTIONS.—In this conflict certain rules are applicable, viz.: (1) Special take precedence of general presumptions; (2) constant of casual ones; (3) presume in favor of innocence; (4) of legality; (5) of validity, and when these rules fail, the matter is said to be at large.—*Brown*.

CONFORMITY.—In English ecclesiastical law, adherence to the doctrines and usages of the Church of England. As to **BILLS OF CONFORMITY**, see that title.

CONFRARIE.—A fraternity, brotherhood, or society.—*Cowell*.

CONFRÈRES.—Brethren in a religious house; fellows of one and the same society.—*Cowell*.

CONFRONTATION.—

§ 1. In criminal law.—The putting the witness face to face with the accused, for purposes of identification and to enable the accused to object to the witness, if he can.

§ 2. In matrimonial suits, in the Probate, Divorce, and Admiralty Division of the English High Court (other than suits for dissolution) the respondent may be ordered to attend in court while the witnesses are giving evidence, so as to be confronted with them (*i. e.* pointed out to them) for the purpose of identification. *Browne Div.* 259.

CONFUSIO.—A civil law term for the mixture of liquids and metals, while *commixtio* (*q. v.*) signified the mingling of dry substances. It was one of the modes of acquiring property. See **CONFUSION OF GOODS**.

CONFUSION.—In the French law, a mode of extinguishing a debt, by the concurrence, in the same person, of two qualities which mutually destroy one another. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer.

CONFUSION OF BOUNDARIES.

—See **BOUNDARIES**, §§ 2, 3.

CONFUSION OF GOODS.—Where goods of two persons are so intermixed that the several portions can no longer be distinguished. If the intermixture be by consent, it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if one wilfully intermix his money, corn, or hay, with that of another man, without his approbation or knowledge, or cast gold in like manner into another's melting-pot or crucible, the law allows no remedy in such a case, but gives the entire property, without any account, to him whose original dominion or property is invaded, and endeavored to be rendered uncertain without his consent. 2 Bl. Com. 405.

CONFUSION OF GOODS, (defined). 7 Conn. 274; 30 Me. 237.

CONGÉ.—In the French law, a passport or clearance to a vessel; a permission to arm, equip, or navigate a vessel.

CONGÉ D'ACORDER.—Leave to accord or agree. When the original writ, in a process for levying a fine, was delivered, a pleader for one of the parties asked the justice for a *congé d'accorder*, or leave to agree with the plaintiff.—*Termes de la Ley*.

CONGÉ D'ÉLIRE.—Permission to elect.

§ 1. **For election of bishop.**—A license from the crown to the dean and chapter of a bishopric, allowing them to proceed to the election of a bishop; it is accompanied by a letter missive from the crown, containing the name of the person whom he would have them elect, "by virtue of which license the dean and chapter shall with all speed in due form elect and choose the said person named in the letters missive, and none other, and if they delay their election above twelve days after such license or letters missive to them delivered, the king shall nominate and present, by letters patent under the great seal, such person as he shall think convenient." Stat. 25 Hen. VIII. c. 20; Phillim. Ecc. L. 42; 1 Bl. Com. 379.

§ 2. **For election of deans.**—A *congé d'élire* appears to be also used in the election of deans on some of the old foundations. Phillim. Ecc. L. 154.

CONGÉ D'EMPARLER.—In old English practice, leave to emparler.—*Burrill*.

CONGEABLE.—OLD FRENCH: *conge*, a temporary dispensation or liberation from a duty; from the Latin *conmeatus*, furlough. Littré Dict. s. v.

In the old books, lawful or allowable; "disseisin is properly where a man entreteth into any lands or tenements where his entry is not congeable, and ousteth him which hath the freehold," &c. Litt. § 279.

CONGUIS.—A measure containing a little more than a gallon.—*Blount; Cowell*.

CONGRESS.—

§ 1. **In international law.**—An assembly of envoys, commissioners, deputies, &c., from different courts, who meet to concert measures for their common good, or to adjust their mutual concerns.

§ 2. **Of the United States.**—The assembly of senators and representatives of the several States, forming the legislature of the United States. It consists of a Senate and a House of Representatives, each constituting a distinct and independent branch. The House of Representatives is chosen every second year by the people of the several States, and electors are required to have the same qualifications as are requisite for choosing the members of the most numerous branch of the State legislature of the State in which they vote. No person can be a representative who shall not have attained the age of twenty-

five years, and have been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen. No other qualifications are required. The Senate is composed of two senators from each State, who are chosen by the legislature of the State for six years. They are divided into three classes, so that one-third thereof is, or may be, changed by a new election every second year. No person can be a senator who is not thirty years of age and has not been nine years a citizen of the United States, and is not, when elected, an inhabitant of the State for which he is chosen. The time, place, and manner of holding elections for senators and representatives are appointed by the State legislatures. Each house determines the rules of its own proceedings, and has power to punish its members for disorderly conduct. Neither house, during the session of congress, can, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. The senators and representatives are entitled to receive a compensation provided by law for their services, from the treasury. They are also privileged from arrest for civil causes during the session.

CONJECTIO.—In the civil law, a throwing together, *e. g.* a grouping of facts and a presumption deduced therefrom.

CONJECTIO CAUSÆ.—The throwing together of a case, *i. e.* a brief statement or synopsis of the case, handed to the judge by the respective advocates before entering upon the argument.—*Calv. Lex*.

CONJECTURE.—An idea or surmise inducing a slight degree of belief, founded upon some possible, or, perhaps, probable fact, of which there is no positive evidence.

CONJOINTS.—Persons married to each other.

CONJUDEX.—In old English law, an associate judge. Bract. 403.

CONJUGAL RIGHTS.—See RESTITUTION OF CONJUGAL RIGHTS.

CONJUNCTIVE.—Joining or connecting together. Thus, the conjunction "and" is called a "conjunctive," and "or" a "disjunctive" conjunction. But

these two conjunctions are often read the one for the other. See **AND**; **OR**.

CONJURATION.—A plot or compact made by persons combining by oath, to do any public harm. But it is more especially used for the having personal conference with the devil, or some evil spirit, to know any secret or effect any purpose. The difference between conjuration and witchcraft, is that a person using the one, endeavors, by prayers and invocations, to compel the devil to say or do what he commands him; the other deals rather by friendly and voluntary conference, or agreement with the devil or familiar, to have his desires served, in lieu of blood or other gift offered. And both differ from enchantment or sorcery, because they are personal conferences with the devil, and these are as it were but medicines and ceremonial forms of words, usually called "charms," without apparition.—*Cowell*; *Jacob*.

CONJURATOR.—A compurgator (*q. v.*)

CONNECTED WITH, (in a statute). 16 Mich. 405, 431.

CONNECTICUT TITLE IN PENNSYLVANIA, (history of). 2 Watts (Pa.) 31.

CONNECTIONS, (distinguished from "relations"). 1 Pa. St. 506.

CONNIVANCE.—

§ 1. **Generally.**—Where a person knows that a wrongful act is being done, and either assists or does not interfere to prevent it, he is guilty of connivance. Connivance may take the form of fraud or conspiracy (*q. v.*)

§ 2. **In the law of divorce**, connivance is where a person has consented or acquiesced in an adultery committed by his or her husband or wife. It is a defence to an action for dissolution of marriage presented by the conniving party. Browne Div. 88. See **ACCESSORY**; **CONDONATION**; **CONSPIRACY**.

CONNOISSEMENT.—In the French law, an instrument similar to our bill of lading (*q. v.*)

CONNUBIUM.—In the civil law, marriage. Among the Romans, a lawful marriage as distinguished from "concubinage," (*q. v.*) which was an inferior marriage.

CONQUERED COUNTRY, (rights of inhabitants). 9 Pet. (U. S.) 711.

CONQUEST.—(1) The feudal and Scotch term for "purchase." (2) The acquisition of territory by force of arms.

CONQUEST, (as foundation of title). 8 Wheat. (U. S.) 588.

CONQUESTOR.—Conqueror. The title given to William of Normandy.

CONQUETS.—In the civil law, gains or acquisitions made either by the husband or wife, during coverture, and which formed part of the community property. See **ACQUETS**; **COMMUNITY**.

CONQUISITIO—CONQUISITOR.—In old English law, *conquisitio* meant "acquisition by purchase," the purchaser being called a "conquisitor."

Consanguineus est quasi eodem sanguine natus (Co. Litt. 157): A person related by consanguinity, is, as it were, sprung from the same blood.

CONSANGUINEUS FRATER.—A brother by the father's side, in contradistinction to *frater uterinus*, the son of the same mother.—*Wharton*.

CONSANGUINITY.—**LATIN:** *consanguineus*, related by the same blood; in Roman law, *consanguinei*, brothers and sisters descended from the same father, as opposed to *uterini*, brothers and sisters descended from the same mother.

Relationship by descent, either lineally, as in the case of father and son, or collaterally, by descent from a common ancestor; thus, cousins are related by collateral consanguinity, being descended from the same grandfather or grandmother. The prohibited degrees of consanguinity, namely, those which, in England, prevent marriage between persons so related, are set forth in the Book of Common Prayer. Browne Div. 72; 1 Bl. Com. 434; 2 Steph. Com. 194, 242. See **AFFINITY**; **COSINAGE**; **HALF BLOOD**; **NEXT-OF-KIN**.

CONSANGUINITY, (defined). 1 Bradf. (N. Y.) 495.

CONSCIENCE, COURTS OF.—Tribunals for the recovery of small debts, constituted by acts of parliament in the city of London and other towns. (See 5 and 6 Wm. IV. c. 94.) The ordinary constitution of these courts, which were generally for causes of debt to the amount of 40s. only, but often to the amount of £5, was to examine in a summary way, and without jury, by the oath of the parties, or other witnesses, and make such order therein as was consonant to equity and good conscience. (7 and 8 Vict. 96.) The county courts have superseded them.—*Wharton*.

Conscientia dicitur a "con" et "scio," quasi scire cum Deo (1 Co. 100): Conscience is called from *con* and *scio*, to know, as it were, God.

CONSCIENTIOUSLY, (in grand jurors' oath) 4 Halst. (N. J.) 244.

CONSCRIPTION.—Conscription for service in the army or navy, means compulsory service falling upon all male subjects evenly, within or under certain specified ages. Conscripts are drawn by lot.

Consecratio est periodus electionis; electio est præambula consecrationis (2 Rol. 102): Consecration is the termination of election; election is the preamble of consecration.

CONSECRATION.—Making a bishop by imposition of hands.

CONSEIL DE FAMILLE.—In French law, certain acts require the sanction of this body. For example, a guardian can neither accept nor reject an inheritance to which the minor has succeeded without its authority (Code Nap. 461); nor can he accept for the child a gift *inter vivos* without the like authority (*Id.* 463). So, also, in bringing or compromising a suit on behalf of the child, or generally in compounding claims, and in numerous personal relations, *e. g.* consent to marriages of orphans, the authority of this body is necessary.

CONSEIL JUDICIAIRE.—In French law, when a person has been subjected to an interdiction on the ground of his insane extravagance, but the interdiction is not absolute, but limited only, the court of first instance which grants the interdiction, appoints a council, with whose assistance the party may bring or defend actions, or compromise the same, alienate his estate, make or incur loans, and the like.

CONSENSUAL CONTRACT.—A contract founded upon and completed by the mere consent of the contracting parties.

Consensus est voluntas plurium ad quos res pertinet, simul juncta (Lofft 514): Consent is the conjoint will of many persons to whom the thing belongs.

Consensus facit matrimonium: Consent constitutes marriage.

Consensus, non concubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nuptiales (6 Co. 22): Consent, and not cohabitation, constitutes nuptials or marriage, and persons cannot consent before marriageable years. 1 Bl. Com. 434.

Consensus tollit errorem (Co. Litt. 126): Consent (acquiescence) removes mistake. See 13 Vr. (N. J.) 400.

CONSENT.—**LATIN:** *con*, with, and *sentire*, to feel.

§ 1. **In general.**—A concurrence of wills. Mutual assent, either express or implied. (See **ASSENT**.) It must be voluntary, and the person sought to be held

must have had both the physical and mental power or capacity to act.

§ 2. **Settlement.**—Where, in England, there is a protector of a settlement of entailed lands, the tenant in tail cannot absolutely bar the entail without the consent of the protector; this consent may be contained either in the disentailing assurance or in a separate deed. (Fines and Recoveries Act, §§ 42 *et seq.*) Where the lord chancellor is protector (which happens when the person who would otherwise be protector is a lunatic), the consent consists of an order authorizing the disentailment. (*Id.* §§ 48, 49. As to consents under the Settled Estates Act, 1877, see §§ 24 *et seq.*, 49; Order 5 *et seq.*)

§ 3. **In civil practice,** an order to which the parties consent cannot be appealed against; but if the consent of any party is obtained by fraud or the like, the order may be set aside. In such a case there is in truth no consent, and a consent may be withdrawn at any time before the order is perfected.

CONSENT, (defined). 10 Mass. 379.

— (what is a legal). 4 Paige (N. Y.) 520, 524.

— (distinguished from "submit"). 9 Car. & P. 722.

— (in an agreement). 6 Wend. (N. Y.) 103, 114; 1 Car. & P. 189.

— (in arbitration bond). 1 Ld. Raym. 674.

— (in act relating to change of venue). 84 Ill. 195.

— (in rape). 50 Wis. 518, 520, 522.

CONSENT RULE.—An instrument in which a defendant, in an action of ejectment, specified for what purpose he intended to defend, and undertook to confess not only the fictitious lease, entry and ouster, but that he was in possession.

CONSENT RULE, (refusal to join in). 2 Harr. (N. J.) 313.

CONSENT, WE SHALL BE OBLIGED TO, (defined). 2 Atk. 261, 265.

Consentientes et agentes pari pœna plectantur (5 Co. 80): Those consenting and those perpetrating are embraced in the same punishment.

Consequentia non est consequentia (Bac. Max.): The consequence of a consequence exists not.

CONSEQUENTIAL DAMAGES.
—See **DAMAGES**.

CONSEQUENTIAL DAMAGES, (defined). 51 N. H. 504, 513.

CONSERVANCY.—See **CONSERVATOR**.

CONSERVATOR.—A protector, preserver, or maintainer; or a standing

arbitrator chosen and appointed as a guarantee, to compose and adjust differences that should arise between two parties, &c.—*Wharton*.

CONSERVATORS OF RIVERS.—

Commissioners or trustees in whom the control of a certain river is vested, in England, by act of parliament. It is often a question whether the act gives the conservators the right of navigation or passage only, or whether it also vests in them the soil of the river and its banks. They generally have power to make locks, towing-paths, and similar works, to levy tolls, and to make and enforce by-laws for regulating the navigation and use of the river. *See* Couls. & F. Waters 80 *et seq.*

The conservancy of the river Thames is regulated by the Acts 20 and 21 Vict. c. 147; 29 and 30 Vict. c. 89; 30 and 31 Vict. c. 101; 33 and 34 Vict. c. 149. *Id.* 451 *et seq.*

CONSERVATORS OF THE PEACE.—

Before the present system of appointing justices of the peace was invented, there were peculiar officers appointed by the common law for the maintenance of the public peace in England. Of these, some had this power annexed to other offices held by them. Others had it merely by itself. Those that were conservators of the peace *virtute officii* still continue, including the crown, the lord chancellor, the judges of the Queen's Bench Division, and the coroners and sheriffs within their respective jurisdictions. The other kind of conservators are superseded by the modern justices of the peace. (2 Steph. Com. 642.) In America, the judges of the various State courts, and of the federal courts, are conservators of the peace.

CONSERVATORS OF TRUCE AND SAFE CONDUCTS.—

Officers appointed at ports to hear and determine questions relating to the breaking of truce and safe conducts, and the abetting and receiving truce breakers, which offence was, in affirmance and support of the law of nations, declared to be treason. It was enacted by 18 Hen. VI. c. 4, that if any of the king's subjects attempt or offend upon the sea, or in any port within the king's obedience, against any stranger in amity, league, or truce, or under safe conduct, and especially by attacking his person, or spoiling him, or robbing him of his goods, the lord chancellor, with any of the justices of either the King's Bench or Common Pleas, should cause full restitution and amends to be made to the party injured.—*Wharton*.

CONSIDERATIO CURLÆ.—The judgment of the court.

CONSIDERATION.—

§ 1. **What constitutes.**—The consideration in a contract, conveyance or other legal transaction, is an act or promise by which some right, interest, profit or benefit accrues to one party, or by which some forbearance, detriment, loss or responsibility is given, suffered or undertaken by the other, and in return for which the party who receives the benefit, or for whom the detriment is suffered, promises or conveys something to the other. (*Currie v. Misa*, L. R. 10 Ex. 162; *Poll. Cont.* 147. Compare the definitions in *Evans' Pothier*, and in *Chit. Cont.* 16; *Leake Cont.* 10.) Thus, in a contract of sale, the money paid or agreed to be paid by the purchaser is the consideration to the vendor, and the property sold is the consideration to the purchaser. So, if a person foregoes a legal right, that is a detriment to him which may form a consideration for a payment or promise by the person against whom he might have enforced the right. The consideration is said to move from the party who produces the benefit or suffers the detriment of which it consists, and to move to the other party; every other person is said to be a stranger to it. Thus, where A. being indebted to B. in £70, made an arrangement with C. that C. should pay the money to B., and that A. in return should convey a house to C., in consideration of which C. promised to pay the £70 to B., it was held, in an action brought by B. to enforce C.'s promise, that B. was a stranger to the consideration, and therefore could not recover. (*Crowe v. Rogers*, Str. 592.) Whether the person receiving the consideration derives any benefit from it, or whether it is adequate, is immaterial; thus, if a man who owns some goods allows another to weigh them, this being an inconvenience or detriment suffered by him, is a good consideration for the other's promise to give them back in as good condition as before. *Bainbridge v. Firmstone*, 8 Ad. & E. 743.

§ 2. **Necessity of.**—The doctrine of consideration is of importance in many ways; thus, an action does not lie for breach of a contract not under seal, unless there is a consideration between the parties (*see* CONTRACT; VOLUNTARY); nor will spe

cific performance of a gratuitous contract be enforced, even if it is under seal (Poll. Cont. 164); and although no consideration is required for the validity of a complete declaration of trust or a complete transfer of any legal or equitable interest in property, yet an incomplete voluntary gift creates no right which can be enforced (*Id.* 165); thus, if a person expresses his intention of voluntarily giving another an interest in property, but does not effect his intention by absolutely parting with it, no trust is created. *Warriner v. Rogers*, 16 Eq. 340.

In dealing with the various kinds of considerations it will be convenient to assume that in each case the consideration forms part of a contract; *i. e.* is in return for a promise, although, as already explained, it may form part of a conveyance.

With reference to its connection with the promise in regard to time, a consideration may be of various kinds.

§ 3. **Past or executed.**—A past or executed consideration is some act performed, or some value given before the making of the promise. (*Chit. Cont.* 48.) Thus, if A. does an act for B.'s benefit, and B. afterwards promises to pay him \$50 in return, the consideration for B.'s promise is executed. The question is of importance, because such a consideration is not sufficient to support the subsequent promise, unless a previous request can be shown or implied by law, as if A. requested B. to do the act, and afterwards promised him the \$50; in such a case the same result is produced as if the promise had preceded the act. *Lampleigh v. Braithwaite*, *Hob.* 106. *See CONTRACT; PROMISE; REQUEST.*

§ 4. **Simultaneous, or concurrent.**—The consideration and the promise may be simultaneous; *i. e.* the promise may be given and the consideration executed at the same time; as where A. pays B. ready money in consideration for B.'s promise to deliver him goods at a future time.

§ 5. **Executory.**—The consideration may be executory; *i. e.* to be performed at some future time. An executory consideration may be either an act which the promisee is bound to perform (in which case the contract consists of mutual promises; *see PROMISE*), or simply an act which

he may do or not at his own pleasure; thus, where A. promises B. that if he will sell goods to C., A. will guarantee payment of the price; here B. is not bound to supply goods to C., and until he does so he has no claim on A.; but, as soon as he supplies goods to C., that forms a consideration for A.'s promise. *See GUARANTY; LETTER OF CREDIT.*

§ 6. **Continuing.**—A continuing consideration is one which is in part executed and in part executory, as where A., in consideration of his being tenant to B., undertakes to manage the farm in a husbandlike manner. *Chit. Cont.* 51.

With reference to the nature of the act of which it consists.

§ 7. **"Good" and "valuable."**—"A good consideration is such as that of blood, or of natural love and affection, being founded on motives of generosity, prudence and natural duty" (2 *Bl. Com.* 297); hence a "good" consideration is sometimes opposed to a "valuable" consideration, *i. e.* one by which some benefit accrues to the promisor or some detriment to the promisee as above explained. It seems that the only purpose for which a good consideration in this sense is effectual in law, where the contract has not been fully performed, is to support a covenant to stand seized to uses (*q. v.*) (*Id.* 337; *Shep. Touch.* 512; *Hayes Conv.* 102; *Leake Cont.* 312 *n.* (e)), and at the present day, covenants to stand seized being comparatively unknown, "good" and "valuable," as applied to considerations, are synonymous terms. *Chit. Cont.* 18.

§ 8. **Illegal.**—A promise founded on an illegal consideration is void, whether the consideration is wholly or partly illegal. *Leake Cont.* 322, 409. *See ILLEGAL; UNLAWFUL.*

§ 9. **Other kinds** of consideration are, *equitable*, or *moral* considerations, which, like all "good" considerations, are sufficient to support an executed contract but not an executory one; *gratuitious considerations*, which are generally void because of want of injury or deprivation to the promisee; and *impossible* considerations, or such as cannot be performed.

§ 10. **Failure of consideration.**—When a consideration does not produce

the advantage which was contemplated by the parties, it is said to have "failed." Where a person has paid money on the strength of a consideration which entirely fails, he may, in some cases, recover it back. Thus, if A. sells goods which are not his own, to B., and the true owner subsequently claims them, B. may recover the price which he paid to A., as having been paid for a consideration which has failed. Leake Cont. 60.

CONSIDERATION, (defined). 4 Kent Com. (11 edit.) 605; 16 Ch. D. 265.

—— (what constitutes). 5 Cranch (U. S.) 142; 2 Hill (N. Y.) 659, 661.

—— (distinction as to, in contract under seal, and by parol). 5 Abb. (N. Y.) Pr. 41; 10 Barb. (N. Y.) 303.

—— (what is sufficient) 3 Day (Conn.) 465, 469.

—— (sufficiency of, in a contract). South. (N. J.) 760.

—— (in an agreement to become security). Penn. (N. J.) 635.

—— (under statute of frauds). Penn. (N. J.) 98; South. (N. J.) 491.

—— (fraudulent or illegal, in a bond or mortgage). South. (N. J.) 475.

CONSIDERATION, GOOD OR VALUABLE, (necessary in a deed of a tenant in tail). 5 Mass. 63.

CONSIDERATION OF WHICH, (in an agreement). 12 Mod. 456, 462; 4 T. R. 761, 764.

CONSIDERATION, TRUE, (in statute as to bonds with warrant of attorney). 6 Halst. (N. J.) 325.

CONSIDERATIONS, OTHER, (in a deed). 1 Johns. (N. Y.) Ch. 370, 381; 1 Ves. 128.

CONSIDERATIONS THEREIN MENTIONED, (in a pleading). 2 Saund. 12a, n. 20.

CONSIDERATUM EST, (in entry of judgment). 14 Pet. (U. S.) 543; Cro. Jac. 386; 1 Saund. 342, n. 5.

CONSIDERATUM EST ETIAM, (defined). Penn. (N. J.) 835.

CONSIDERATUM EST PER CURIAM.—It is considered by the court. The formal and ordinary commencement of a judgment. 3 Steph. Com. (7th edit.) 569.

CONSIGN.—

§ 1. In mercantile law, to send goods to an agent, commission merchant, correspondent or factor, to be sold, stored, &c.

§ 2. In the civil law, to make a consignment (*q. v.*)

CONSIGN, (in a contract). 118 Mass. 324.

CONSIGNATION.—(1) In the civil law, the deposit of a thing owed with a third person, under the authority of the court. (2) In the Scotch law, the payment of money which the creditor refuses to receive, into the hands of a third party, called the "consignatory."—*Bell Dict.*

CONSIGNED, (defined). 3 Keyes (N. Y.) 17. — (implies agency). 4 Abb. (N. Y.) Pr. 76.

—— (in a policy of insurance). 3 Robt. (N. Y.) 296, 305.

CONSIGNEE.—One to whom a consignment of goods is sent.

CONSIGNEE, (when property vests in) 8 Wheel. Am. C. L. 155.

—— (power of). 4 Hen. & M. (Va.) 432.

—— (is at liberty to incur expenses). 6 Greenl. (Me.) 50.

—— (liability of). 5 Mass. 157; 7 Id. 36.

—— (stoppage *in transitu*). 14 Mass. 40.

CONSIGNMENT.—The sending of goods to another for sale or purchase; also the goods themselves so sent.

CONSIGNOR.—One who sends or makes a consignment. A shipper of goods.

Consilia multorum quærentur in magnis (4 Inst. 1): The counsels of many are required in great things.

CONSILIARIUS.—(1) In the Roman law, one who sat with the judge and gave him advice; an *assessor* (*q. v.*) (2) In old English law, a counsellor; one learned in the law.

CONSILIUM.—A time anciently allowed for the accused to make his defence and answer the charge of the accuser. It was afterwards used for a speedy day appointed to argue a demurrer; which the court granted after the demurrer joined, on reading the record of the cause, &c.—*Jacob.*

CONSIMILI CASU.—In old English practice, the name of a writ of entry which lay where a tenant by the curtesy, or tenant for life, aliened in fee, or in tail, or for another's life. It was brought by him in the reversion against the party to whom such tenant so aliened to his prejudice, and in the tenant's lifetime.—*Burrill.*

CONSISTORIAL, or CONSISTORY COURT.—The principal ecclesiastical court of a diocese, in which the chancellor or official principal sits as judge. (Phillim. Ecc. L. 1202.) As to the practice of the Consistory Court of London, see Reg. Gen. 1877 (L. R. 2 P. D. 373.) See DIOCESAN COURTS.

CONSOBRINI.—A civil law term for cousins-german, or first cousins.

CONSOLATO DEL MARE.—A code of maritime laws compiled by order of the ancient kings of Arragon.—*Wharton.*

CONSOLIDATED FUND.—This fund, in Great Britain, comprises the produce of the customs, excise, stamps, and other taxes, with a few other sources of revenue, and it constitutes almost the whole of the ordinary public income

of the United Kingdom. On it are charged the interest of the national debt, the civil list, &c. 2 Steph. Com. 578; Cox Inst. 189. See *APPROPRIATION*, § 6.

CONSOLIDATED ORDERS.—

The orders regulating the practice of the English Court of Chancery, which were issued, in 1860, in substitution for the various orders which had previously been promulgated from time to time. Some of the consolidated orders have been abrogated by the provisions of the Judicature Acts, and the new rules of court, but many of them are still in force. See *CHANCERY*.

CONSOLIDATING CAUSE, (in actions of ejectment). 3 Harr. (N. J.) 88.

CONSOLIDATION.—In the civil law, the uniting the possession, occupancy, or profits, &c., of land with the property, and *vice versa*. In the ecclesiastical law, the uniting two benefices by assent of the ordinary, patron, and incumbent.

CONSOLIDATION, (defined). 45 Iowa 53, 56.
—— (as applied to railroad corporations). 64 Ala. 650.

CONSOLIDATION OF ACTIONS.

§ 1. **Several defendants.**—Under the practice of superior courts of common law jurisdiction, if several actions are pending between the same parties, for the same cause of action, or brought by the same plaintiffs against different defendants, for the same, or substantially the same cause of action, the court will sometimes stay proceedings in all but one action. The application is most frequently made in actions against underwriters on a policy of insurance. In such a case, as the question is the same against each underwriter, it is usual for the defendants to move for what was called the “consolidation rule”—a rule which was invented by Lord Mansfield, and the effect of which is, to bind the defendants in all the actions by the verdict in one, the proceedings in the others being stayed. The order does not bind the plaintiff by the result of the selected action, and, therefore, if he fails in that action, he may proceed in the others. If he is successful, the defendants are jointly liable to contribute to the payment of the amount claimed and the plaintiff's costs. Archb. Pr. 1085; Coe Pr. 126.

§ 2. **Several plaintiffs.**—Another mode of consolidation is that applicable to the case of several actions being brought by different plaintiffs against the same defendant for the same cause of action; here

the court will, on the application of the plaintiffs, make one of the actions a test action by enlarging the time for the plaintiffs to proceed with the other actions until the test action has been decided, they consenting to be bound by the result of that action; the defendant is not so bound, and therefore, if he is unsuccessful in the test action, he may nevertheless defend the others when they are proceeded with. (*Amos v. Chadwick*, 4 Ch. D. 869.) If the selected action fails to decide the real issue between the parties (as if the plaintiff in that action suffers judgment to go by default against him), the court will substitute another action as the test action. *Robinson v. Chadwick*, 7 Ch. D. 878; *Amos v. Chadwick*, 9 Ch. D. 459. See *ACTION*, § 5.

§ 3. **Chancery actions.**—Under the practice of Courts of Chancery two suits or actions are said to be consolidated when they are ordered to be carried on as one action, the parties to one of them being distributed as plaintiffs or defendants in the other. See *In re Wortley*, 4 Ch. D. 180.

§ 4. **In Privy Council practice**, in England, where there are several appeals against one judgment or relating to the same subject-matter, the court will frequently permit them to be consolidated, and to come on for hearing on one printed case on each side, and a single appendix. Macph. Jud. Com. 91.

CONSOLIDATION OF ACTIONS, (defined). 13 Vroom (N. J.) 544.

CONSOLIDATION OF SECURITIES.

—In English law, if the owner of different properties mortgages them to one person separately for distinct debts, or successively to secure the same debt or the same debt with further advances, and allows the time for redemption limited by all the mortgages to go by, then the mortgagee may insist that one security shall not be redeemed alone. Thus, if A. mortgages Whiteacre to B. to secure £500, and afterwards mortgages Blackacre to B. to secure £1000, A. cannot redeem (*i. e.* pay off) the mortgage on Whiteacre without also redeeming the mortgage on Blackacre. Similarly where A. mortgages Whiteacre to B. and Blackacre to C., and C. afterwards purchases B.'s mortgage, A. cannot redeem one without redeeming the other. The doctrine has been carried to such an extent that if A. assigns the equity of redemption in Whiteacre to X., then X. cannot redeem Whiteacre without also redeeming Blackacre. (2 Fish. Mort. 630; Wms. Real Prop. 441; *Cummins v. Fletcher*, 14 Ch. D. 699. It is hoped that this absurd and unjust doctrine will shortly be abolished.) The rule, however, would not apply if the equity of redemption in Whiteacre was assigned to X. before A. mortgaged Blackacre.

(*Mills v. Jennings*, 13 Ch. D. 639,) and, as already stated, it does not apply except where the time for redemption of each mortgage has gone by. (*Cummins v. Fletcher*, *supra*.) The doctrine also does not apply to registered bills of sale of chattels. *Chesworth v. Hunt*, 5 C. P. D. 266.

"Consolidation" must not be confounded with "tacking," although they are sometimes spoken of as synonymous.*

CONSOLIDATION RULE.—See CONSOLIDATION OF ACTIONS, § 1.

CONSOLS.—Funds formed by the consolidation (of which word it is an abbreviation) of different annuities, which had been severally formed into a capital. See CONSOLIDATED FUND.

Consortio malorum me quoque malum facit (Moore 817): The company of wicked men makes me also wicked.

CONSORTIUM.—Association; companionship; union, in marriage, or of parties to an action.

CONSPIRACY.—

§ 1. The agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means, whether the act is committed or not. *Mulcahy v. Reg.*, L. R. 3 H. L. 317; *Wright Cr. Consp.*, where the criminal law of conspiracy is historically explained. See OVERT ACT.

§ 2. **Civil.**—In private law, conspiracy is a tort in the nature of trespass, for which the injured person has an action for the damage caused to him, as where several persons conspire to falsely indict a man of a crime. (*Finch Law* 305; 3 *Steph. Com.* 384. See MALICIOUS PROSECUTION.) A combination among several persons to affect the market price of a commodity by unlawful means (*e. g.* fictitious purchases or sales) would also, no doubt, give a person injured thereby a right of action against the conspirators. See *Rex v. De Berenger*, 3 *Mau. & Sel.* 67; *Reg. v. Aspinall*, 1 Q. B. D. 730; 2 *Id.* 48.

§ 3. **Criminal.**—In criminal law a conspiracy is a misdemeanor, (4 *Steph. Com.* 238; *Steph. Cr. Dig.* 29, 87; *Reg. v. Aspinall*, *supra*;) some conspiracies, how-

ever, are subject to special punishments, *e. g.* a conspiracy to murder a person. Combinations among workmen to raise the rate of wages were formerly conspiracies, being in restraint of trade, but this is no longer so. (*Trades Union Act*, 1871; see, however, 34 and 35 *Vict. c.* 32.) It has been said that, perhaps, few things are left so doubtful in the criminal law as the point at which a combination of several persons in a common object becomes unlawful. 3 *Russ. Cr.* 109.

CONSPIRACY, (defined). 6 *Ala.* 765; 12 *Conn.* 101; 25 *Ill.* 17, 24; 30 *Me.* 132; 48 *Id.* 218; 4 *Metc. (Mass.)* 111, 122; 4 *Mich.* 414; 15 *N. H.* 396; 16 *Johns. (N. Y.)* 592; 9 *Cow. (N. Y.)* 578, 587; *Bright. (Pa.)* 143.

— (what constitutes). 7 *Biss. (U. S.)* 111; 2 *Mass.* 536; 6 *Car. & P.* 239, 240.

— (when indictable). 2 *Mass.* 329.

— (form of indictment for). 1 *Mass.* 473.

— (to raise wages). 14 *Wend. (N. Y.)* 9; 2 *Wheel. Cr. Cas.* 262, 279.

CONSPIRATIONE.—A writ which lay against conspirators.—*F. N. B.* 114; *Reg. Orig.* 134.

CONSPIRATORS.—Persons who are guilty of a conspiracy.

CONSTABLES.—LOW LATIN: *constabularius*, from *stabula*, a stable, the first constables having been originally masters of the king's stables and afterwards commanders of troops in time of war or disturbance, especially on the borders of the kingdom. *Mad. Ex. Ch.* 39 *et seq.*

Inferior officers of the peace of various kinds.

§ 1. **High constables** are appointed at the courts leet of the franchise or hundred over which they preside, or in default of such an appointment, then by the justices at their special sessions. Their duty seems to be to keep the peace within the hundred, but the office is in process of abolition. 2 *Steph. Com.* 652; *Stat.* 32 and 33 *Vict. c.* 47.

§ 2. **Petty or parish constables.**—The principal duty of petty or parish constables is the preservation of the peace within their parish or township; they also

*The Conveyancing Act, 1881, abolishes the right of consolidation in many cases, by enacting (§ 17) that a mortgagor entitled to redeem any one mortgage shall be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to

redeem. This provision only applies where the mortgages, or one of them, are or is made after the 31st December, 1881, and then only if a contrary intention is not expressed in the mortgage deeds or one of them. "Mortgagor" includes any person deriving title under the original mortgagor, or entitled to redeem the mortgage.

have assigned to them the service of the summonses and the execution of the warrants of the justices of the peace. These are also the principal duties of constables in this country. In many places in England, they have been superseded by the establishment of a county police, who are under the superintendence of a chief constable appointed by the justices. 2 Steph. Com. 654 *et seq.*; Stat. 35 and 36 Vict. c. 92.

§ 3. **Borough constables.**—In boroughs subject to the Municipal Corporations Act (5 and 6 Will. IV. c. 76), the constables are appointed by the watch committee of each borough.

§ 4. **Special constables** are persons appointed (with or without their consent) by the magistrates to execute warrants on particular occasions, as in the case of riots, &c. As to other meanings of the word constable, see Co. Litt. 234a.

CONSTABLE, (bond of). 20 Johns. (N. Y.) 74; 2 Wend. (N. Y.) 281, 615; 4 *Id.* 414; 5 *Id.* 191, 197.

— (liability of). 6 Wend. (N. Y.) 367, 369.

— (powers of a). 3 Wend. (N. Y.) 384, 385.

— (suit by, for extra fees). 15 Wend. (N. Y.) 44.

CONSTABLE OF A CASTLE.—A castellan (*q. v.*)

CONSTABLE OF ENGLAND.—The constable of England, or lord high constable, as he was called, was an officer of high dignity and importance, about the time of Henry VIII.; but since that period the office has been disused in England, except on great and solemn occasions. He was then the leader of the king's armies, and had the cognizance of all matters connected with arms and war. He also sometimes exercised judicial functions in the Court of Chivalry, where he took precedence of the earl marshal. His jurisdiction is partly now vested in the Court of Admiralty.—*Brown.*

CONSTABLE OF SCOTLAND.—An officer of great antiquity and high dignity in Scotland, having command of the army in the absence of the king, and possessed of extensive criminal jurisdiction. The office was abolished by Stat. 20 Geo. III. c. 43.

CONSTABLEWICK.—The territory over which the jurisdiction of a constable extends.

CONSTABULARIUS.—A commander of cavalry troops; a commander of foot-soldiers; a naval commander; an officer having charge of military affairs of any kind.—*Spel Floss.*

CONSTAT.—It appears. A certificate which the clerk of the pipe and auditors of the Exchequer made, at the request of any person

who intended to plead or move in that court for the discharge of anything. The effect of it was to certify what appears (*constat*) upon record, touching the matter in question.—*Wharton.* See **NON CONSTAT.**

CONSTITUENT.—(1) A person who appoints another to do some act for him by power of attorney (*q. v.*) He is also called a "principal" (*q. v.*) (2) The electors of a member of congress, or of a State legislature, are called such member's constituents.

CONSTITUERE.—To appoint, constitute, establish, ordain, or undertake. Used principally in ancient powers of attorney, and now supplanted by the English word "constitute."

CONSTITUTED AUTHORITIES.

—Officers properly appointed under the constitution for the government of the people. Those powers which the constitution of each people has established to govern them, to cause their rights to be respected, and to maintain those of each of its members.—*Bouvier.*

CONSTITUTIO.

§ 1. In old English law, a statute or ordinance, or a particular provision in a statute.

§ 2. In the civil law, an ordinance or law deriving its force from the mere will of the emperor.

CONSTITUTIO DOTIS.—Establishment of dower.

CONSTITUTION.—(1) Any regular form or system of government, either democratic, as is the constitution of the United States; aristocratic (see **ARISTOCRACY**); or mixed, as is the case with the British constitution, and those of many other monarchical governments. (2) A written instrument emanating from the people of a State or nation, which organizes the government thereof, regulates its administration and limits the exercise of political powers.

CONSTITUTIONAL.—(1) In accordance with, or conformity with the constitution; not in conflict with any provision of the fundamental or organic law of the State. (2) Regulated by, dependent on, or secured by a constitution, as "constitutional government," "constitutional rights."—*Webster.*

CONSTITUTIONAL TERM, (defined). 2 Wend. (N. Y.) 266, 276.

CONSTITUTIONES.—Laws promulgated, i. e. enacted by the Roman emperor. They were of various kinds, namely, the following: (1) *Edicta*; (2) *Decreta*; (3) *Rescripta*, called also *epistolæ*. Sometimes they were general, and intended to form a precedent for other like cases; at other times they were special, particular, or individual (*personales*), and not intended to form a precedent. The emperor had this power of irresponsible enactment by virtue of a certain *lex regia*, whereby he was made the fountain of justice and of mercy.—*Brown*.

Constitutiones tempore posteriores potiores sunt his quæ ipsas præcesserunt (Dig. l. 4, 4): Later laws prevail over those which precede them.

CONSTITUTIONS OF CLARENDON.—*See* CLARENDON.

CONSTITUTOR.—One who promises to pay the debt of another.

CONSTITUTUM.—A civil law term for an agreement to pay a subsisting debt, either of the promisor or of another person for whom he became surety.

CONSTRAINT.—Duress (*q. v.*)

CONSTRAINT, (in acknowledgment of *feme covert*). 2 Tenn. Ch. 427.

CONSTRUCTED, (in a statute relating to railroads). 115 Mass. 400.

— (when machine is). 17 How. (U. S.) 72.

Constructio legis non facit injuriam (Co. Litt. 183): The construction of the law works no injury.

CONSTRUCTION.—The process of ascertaining the meaning of a written document. "Construction of law" is a fixed or arbitrary rule by which a result follows from certain acts or words without reference to the intention of the parties; thus, "if a tenant for life maketh a lease generally, this shall be taken by construction of law an estate for his own life that made the lease; for if it should be a lease for the life of the lessee, it should be a wrong to him in the reversion." (Co. Litt. 183a. As to the existing law on the subject of leases granted by tenants for life, *see* LEASE.) Sometimes, however, "construction of law" simply means "implication;" thus, "if I grant to you, that you and your heirs, or the heirs of your body, shall distrain for a rent of forty shillings within my manor of S., this by construction in law shall amount to a grant of a rent out of my manor of S. in fee-simple or fee-tail." Co. Litt. 147a. *See* IMPLICATION; INTERPRETATION.

CONSTRUCTION, (in statute giving lien on vessel). 1 Sprague (U. S.) 180; 103 Mass. 227.

CONSTRUCTION AND COMPLETION, (of railroad). 23 Minn. 144, 153.

CONSTRUCTION AND REPAIRS, (in statute concerning liens on vessels). 103 Mass. 227.

CONSTRUCTION, COURT OF.—In England, a court of equity or of common law, as the case may be, is called the "court of construction" with regard to wills, as opposed to the court of probate, whose duty is to decide whether an instrument be a will at all. Now the court of probate may decide that a given instrument is a will, and yet the court of construction may decide that it has no operation, by reason of perpetuities, illegality, uncertainty, &c. *See* PROBATE.

CONSTRUCTIVE.—This word denotes (1) that a right, liability or status has been created by the law without reference to the intention of the parties, as in the case of a constructive trust or constructive notice, (*see* NOTICE; TRUST;) or (2) that a transaction or operation has not really taken place, but that something equivalent has. Thus, where delivery of goods is required, if the goods "be ponderous and incapable of being handed over from one to another, there need not be an actual delivery, but it may be done by that which is tantamount, for instance, by the delivery of the key of the warehouse in which goods are lodged, or of some other indicia of property, such as the bill of lading." (Sm. Merc. L. 492; Chaplin v. Rogers, 1 East 192.) This is called "constructive delivery."

§ 2. So a chattel not fixed to land is sometimes for certain purposes considered as being annexed to it, as where a miller "takes the millstone out of the mill, to the intent to pick it to grind the better; although it is actually severed from the mill, yet it remains parcel of the mill as if it had always been lying upon the other stone, and by consequence, by lease or conveyance of the mill, shall pass with it." (Liford's Case, 11 Co. 50; 2 Sm. Lead. Cas. 184.) This is called "constructive annexation." *See* IMPLIED; QUASI-CONTRACT.

CONSTRUCTIVE ADVERSE POSSESSION, (what constitutes). 23 Wend. (N. Y.) 316-320.

CONSTRUCTIVE BREAKING.—*See* BURGLARY, § 1.

CONSTRUCTIVE FRAUD.—*See* FRAUD.

CONSTRUCTIVE LARCENY, (what is not). 15 Serg. & R. (Pa.) 93.

CONSTRUCTIVE LOSS.—See LOSS.

CONSTRUCTIVE NOTICE.—See NOTICE.

CONSTRUCTIVE NOTICE, (defined). 48 N. Y. 326, 339.

CONSTRUCTIVE POSSESSION, (sufficient to maintain action of trespass). 3 Day (Conn.) 498.

CONSTRUCTIVE SEIZURE, (in a levy by a sheriff). 6 Halst. (N. J.) 223.

CONSTRUCTIVE TOTAL LOSS, (of a vessel). 25 Ohio St. 50.

CONSTRUCTIVE TREASON.—An attempt to establish treason by circumstantiality, and not by the simple genuine letter of the law, and therefore highly dangerous to public freedom. (Erskine's Defence of Lord George Gordon; 3 Hallam Const. Hist. c. xv., p. 151.)—Wharton. See TREASON.

CONSTRUCTIVE TRUST.—See TRUST.

CONSTRUED ACCORDING TO COMMON AND APPROVED USAGE OF LANGUAGE, (in a statute). 11 Bush (Ky.) 689.

CONSUEUDINARIUS.—A ritual or book, containing the rites and forms of divine offices, or the customs of abbeys and monasteries.—Wharton.

CONSUEUDINARY LAW.—Law founded upon custom or tradition.

CONSUEUDINES.—In old English law, customs. Thus, *consuetudines et assisa forestæ*, the customs and assize of the forest; *consuetudines feudorum*, the customs of fiefs.

CONSUEUDINIBUS ET SERVITIIS.—A writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him.—F. N. B. 151; New Nat. Brev. 330; Reg. Orig. 159.

CONSUEUDO.—A custom, usage, or practice; a law growing out of custom or usage; a custom, tax, toll or tribute. (See CUSTUM.) This latter meaning is probably incorrect. (See 1 Sharsw. Bl. 313, n.) The word is chiefly found in the following phrases and maxims:

CONSUEUDO ANGLICANA.—The custom of England; the ancient common law as distinguished from *lex*, the civil or Roman law.—Burrill.

Consuetudo, contra rationem introducta, potius usurpatio quam consuetudo appellari debet (Co. Litt. 113): A custom introduced against reason ought to be called rather an usurpation than a custom.

CONSUEUDO CURIÆ.—The custom of the court, i. e. the practice adopted in any particular court.

Consuetudo debet esse certa; nam incerta pro nulla habetur (Dav. 33): A custom should be certain, for an uncertain custom is considered null.

Consuetudo est altera lex (4 Co. 21): Custom is another law.

Consuetudo est optimus interpret legum (2 Inst. 18): Custom is the best expounder of the laws.

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis (Jenk. Cent. 273): Custom and common usage overcomes the unwritten law, if it be special; and interprets the written law, if the law be general.

Consuetudo ex certa causa rationabili usitata privat communem legem (Litt. § 169): A custom grounded on a certain reasonable cause supersedes the common law.

Consuetudo licet sit magnæ auctoritatis, nunquam tamen prejudicat manifestæ veritati (4 Co. 18): A custom, though it be of great authority, should never, however, be prejudicial to manifest truth.

Consuetudo loci observandi est (Litt. § 169): The custom of a place is to be observed.

Consuetudo manerii et loci observanda est (6 Co. 67): A custom of a manor and place is to be observed.

CONSUEUDO MERCATORUM.—The custom of merchants. Another name for the *lex mercatoria* (q. v.)

Consuetudo neque injuria oriri neque tolli potest (Lofft 340): Custom can neither arise from, nor be taken away by, injury.

Consuetudo non trahitur in consequentiam (3 Keb. 499): Custom is not drawn into consequence. See *Muggleton v. Barnett*, 4 Jur. N. S. Ex. 139.

Consuetudo præscripta et legitima vincit legem (Co. Litt. 113): A prescriptive and legitimate custom overcomes the law.

Consuetudo regni Angliæ est lex Angliæ (Jenk. Cent. 119): The custom of the kingdom of England is the law of England. See 2 Bl. Com. 422.

Consuetudo semel reprobata, non potest amplius induci (Dav. 33): Custom once disallowed cannot be again produced.

Consuetudo tollit communem legem (Co. Litt. 33 b): Custom takes away the common law.

Consuetudo volentes ducit, lex nolentes trahit (Jenk. Cent. 274): Custom leads the willing; law compels the unwilling.

CONSULAR COURTS.—Courts held by consuls, under treaty stipulations, for the trial of civil disputes between subjects or citizens of the country from which the consul holding the court comes. They also have a criminal jurisdiction in some countries, subject to the revision of the courts of the home government. See U. S. Rev. Stat. §§ 4083 et seq.

CONSULS.—

§ 1. **In international law.**—A class of diplomatic agents or representatives of a foreign country. Their customary functions are to give advice and assistance to citizens of the State they represent, and to uphold their interests by due representations in the proper quarter, and to certify and attest acts and documents. Mann. Int. Law 113. See EXEQUATUR.

§ 2. **In old English and Roman law,** consul signifies an "earl."—Bract. lib. 1, c. 8, tells us that as "comes" is derived from *comitatu*, so "consul" is derived from *consulendo*; and in the laws of Edward the Confessor mention is made of *vicecomites* and *viceconsules*.—Blount. Consuls, among the Romans, were chief officers, of which two were yearly chosen to govern the city of Rome.—Jacob.

CONSUL, (defined). 2 Cranch (U. S.) 187, 237.

— (in constitution of U. S.) 2 Dall. (U. S.) 297.

— (exemption of, from suit in State court). 8 Pet. (U. S.) 320; 1 Green (N. J.) 109.

— (when not privileged from arrest). 9 East 447; 3 Mau. & Sel. 284, 285; 1 Taunt. 106.

— (status of foreign). 3 Wheat. (U. S.) 435.

— (foreign, may be sued in State court). 10 Wend. (N. Y.) 50.

— (foreign, may be indicted in U. S. courts for rape). 5 Serg. & R. (Pa.) 545.

CONSULTA ECCLESIA.—A church, full or provided for.—Cowell.

CONSULTARY RESPONSE.—The opinion of a court of law on a special case.—Wharton.

CONSULTATION.—(1) A writ whereby a cause which has been wrongfully removed by prohibition out of an ecclesiastical court to a temporal court, is returned to the ecclesiastical court. (Phillim. Ecc. L. 1439.) (2) A meeting between counsel to discuss a question or to settle a document. See CONFERENCE.

CONSUMMATION.—(1) The completion of a thing. (2) The completion of a marriage between two affianced persons by cohabitation. (3) Thus, also, consummation of tenancy by the curtesy, is when a husband, upon his wife's death, becomes entitled to hold her lands in fee-simple, of which she was seized during the marriage, for his own life, provided he has had issue by her, capable of inheriting. His estate becomes *initiate* upon birth of a child.—Wharton.

CONSUMMATION OF A MARRIAGE, (defined).

1 Day (Conn.) 111, 116.

CONTAINING ABOUT — ACRES, (in a deed). 3 Paige (N. Y.) 94, 98; 6 Call (Va.) 218; 4 Munf. (Va.) 332; 1 Pet. (U. S.) C. C. 58; 2 Johns. (N. Y.) 37; 15 Id. 471; 3 Paige (N. Y.) 94, 98; 6 Cow. (N. Y.) 481, 483, 706, 717; 1 Murph. (N. C.) 348; 4 Wheel. Am. C. L. 6; 8 Id. 236.

CONTAINING — ACRES AND NO MORE, (in a deed). 4 Wend. (N. Y.) 58, 64.

CONTAINING — ACRES, MORE OR LESS, (in a deed). 8 Com. Dig. 362.

CONTAINING — ACRES, STRICT MEASURE, AND NO MORE, (in a deed). 19 Wend. (N. Y.) 175, 176.

CONTAINING BY ESTIMATION — ACRES, (in a deed). 103 Mass. 344; 13 Johns. (N. Y.) 257, 258; 19 Id. 97, 101.

CONTAINING BY ESTIMATION — ACRES, MORE OR LESS, (in a deed). 4 Mas. (U. S.) 414, 415.

CONTANGO.—Contracts for shares on the Stock Exchange, London, are made for ready money, or for payment on settling days. If for ready money, the money is paid immediately. If for time, it is paid on the settling day. The price at which stock or shares are sold, to be transferred on the next settling day, is called the "price for account." In the London share market, the account day is generally twice a month. The settling day is always the day before the account day. On the settling day takes place the business of giving the names of the persons for whom brokers have bought, and that of carrying over transactions to another day, which are called "continuances," the commission for which is called "contango." Foreign railway shares are subject to the same rules as English shares. And in foreign stocks, the account and settling days are one and the same.—Wharton.

CONTEMPLATED PASSAGE-WAY, (in a deed). 2 Gray (Mass.) 273.

CONTEMPLATION OF BANKRUPTCY.—A contemplation of the breaking up of one's business, or of an inability to maintain it. (Crabbe (U. S.) 529, 532.) Securities given and sales and conveyances made in contemplation of bankruptcy, or insolvency, are void.

CONTEMPLATION OF BANKRUPTCY, (defined). Crabbe (U. S.) 529; 3 Story (U. S.) 446.

— (in bankrupt law). 1 Dill. (U. S.) 186, 203; 13 How. (U. S.) 151; 2 Story (U. S.) 349.

— (assignment in, held to be void). 1 Dill. (U. S.) 186; 3 Story (U. S.) 446.

CONTEMPLATION OF INSOLVENCY, (defined). 8 Bosw. (N. Y.) 194.

Contemporanea expositio est optima et fortissima in lege (2 Inst. 11): A contemporaneous exposition is the best and most powerful in law. (See Broom Max. (b

edit.) 682.) "Great regard," says Sir Edward Coke, "ought, in construing a statute, to be paid to the construction which the sages of the law who lived about the time, or soon after it was made, put upon it, because they were best able to judge of the intention of the makers at the time when the law was made." These four points are to be considered in the interpretation of all statutes, be they penal or beneficial, restrictive of, or enlarging the common law: (1) What was the common law before the making of the act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy the parliament has resolved and appointed to cure the disease of the commonwealth, and (4) the true reason of the remedy; and then the office of the judges is always to make such construction as shall suppress the mischief and advance the remedy. (3 Co. 7.)—*Wharton*.

CONTEMPT.—

§ 1. Contempt of court is where a person who is a party to a proceeding in a court of record, fails to comply with an order made against him or an undertaking given by him, or where a person, whether a party to a proceeding or not, does any act which may tend to hinder the course of justice or show disrespect to the court's authority. Thus it is a contempt of court to attempt by threats to induce a judicial officer to depart from the course of his judicial duties; to attempt to prevent a party from conducting his case in a proper manner, or to publish, while a cause is pending, comments upon the evidence which are calculated to injure the parties' cases, or to create ill-feeling against the witnesses. (In some jurisdictions this last illustration is not correct. In Pennsylvania, for example, no contempts by others than officers of the court, are punishable, unless committed in the presence of the court, or in violation of its orders; such is also the rule in the federal courts.) It is also a contempt, in England, to remove a ward of court from the custody of the person with whom such ward has been residing under the authority of the court, or to marry a ward of court without the sanction of the court. (Dan. Ch. Pr. 937; 4 Bl. Com. 283.) Inferior courts of record (such as county courts) appear to have power only over contempts *in facie curiæ*, i. e. committed in the court itself. (Reg. v. Lefroy, L. R. 8 Q. B. 131.) The distinction between ordinary contempts in process (as where a defendant in Chancery failed to put in his answer within the

proper time) and special contempts (such as those above mentioned) (Dan. Ch. Pr. 431) seems no longer to exist.

§ 2. A person committing a contempt of court is called a "contemnor," or "contemner."

§ 3. Contempt of court is an offence punishable summarily by fine or imprisonment, or both. (See ATTACHMENT, § 1; COMMITTAL.) Moreover, where a party to a proceeding is guilty of contempt of court, he cannot, as a general rule, make any application to the court while he is in contempt (Dan. Ch. Pr. 427), unless it is required for the purpose of his defence. *Haldane v. Eckford*, L. R. 7 Eq. 425.

§ 4. The contemnor is said to clear or purge his contempt when he expresses his contrition and submits himself to the court. Dan. Ch. Pr. 938.

CONTEMPT OF COURT, (defined). 21 Conn. 185, 198; 3 Scam. (Ill.) 395.

— (what is). Wall. Jr. (U. S.) 77; 4 Johns. (N. Y.) 317, 325; 4 Paige (N. Y.) 405; 5 Id. 54, 56, 311, 313, 489, 490; 3 Wheel. Cr. Cas. 1; 4 Barn. & Ald. 329, 331; 11 Price 68.

— (what is not). Moo. & M. 165, 166.
— (filing a scandalous affidavit is). 1 Mont. & B. 259, 260.

— (under N. Y. statutes, defined). 3 Wheel. Am. C. L. 320.

CONTEMPTS, ("criminal" and "constructive," defined). 49 Me. 392.

CONTEMPT OF CONGRESS, LEGISLATURE, or PARLIAMENT.—Whatever obstructs or tends to obstruct the due course of proceeding of either house, or grossly reflects on the character of a member of either house, or imputes to him what it would be a libel to impute to an ordinary person, is a contempt of the house, and thereby a breach of privilege. (Shortt Copyr. 344, 351, citing *Beaumont v. Barret*, 1 Moo. P. C. 76, and *Holt Lib.* 118; 2 Steph. Com. 344.) Commitment is the ordinary punishment inflicted.

CONTENDERE VULT NON, (has the same effect as a plea of guilty). 9 Pick. (Mass.) 206.

CONTENEMENT.—A landowner's tenement is so called, when regarded as his means of support, i. e. the lands are the same to the landholder as his merchandise is to the merchant, or his wainage to the wagoner.—*Brown*.

CONTENT WITH, (in a will). 18 Wend. (N. Y.) 200, 207.

CONTENTIOUS.—Probate business is divided into contentious and non-contentious, the former including actions for proving a will in solenim form, or revoking a probate already granted, while the non-contentious business consists of the grant of probates and letters of administration in common form. See GRANT; PROBATE; WARNING.

CONTENTIOUS JURISDICTION.—In English ecclesiastical law, jurisdiction to hear and determine any matter between party and party, in an action or other judicial proceeding.

CONTENTS, (of a chose in action, in U. S. Judiciary Act). 5 Blatchf. (U. S.) 107, 114.

CONTENTS UNKNOWN.—Words frequently used in bills of lading to indicate that the goods are admitted to be shipped in good order so far only as the external appearance of the cases or packages is concerned.

CONTENTS UNKNOWN, (in a bill of lading). 12 How. (U. S.) 272; 3 Taunt. 303.

CONTERMINOUS.—Adjacent; adjoining; having a common boundary; co-terminous.

CONTESTATIO LITIS.—See CONTESTATION OF SUIT.

Contestatio litis eget terminos contradictorios (Jenk. Cent. 117): The joinder of issue in a suit needs contradictory terms.

CONTESTATION OF SUIT.—In an ecclesiastical cause, that stage of the suit which is reached when the defendant has answered the libel by giving in an allegation (*q. v.*) If he confesses the libel, he is said to contest the suit affirmatively. If he denies it, he is said to contest the suit negatively, or he may give a qualified affirmative or negative by confessing the whole or part of the libel, and adding other facts. (Phillim. Ecc. L. 1255; Rog. Ecc. L. 720. See CONFESSION AND AVOIDANCE.) The term is a translation of *contestatio litis*, and is taken from the Roman law.

CONTEXT.—Those parts of a writing or book which immediately precede and follow a sentence or clause, the meaning of which is in question, and which they are often resorted to to explain.

CONTEXT, (of a will). 3 Add. Ecc. 210.

CONTIGUOUS, (defined). 69 N. Y. 191, 193.

— (in an application for insurance). 2 Hall (N. Y.) 632, 646.

— (in a fire policy). 69 N. Y. 191.

— (to a highway). 10 R. I. 304.

CONTIGUOUS, ADJOINING, (in pleading). 1 Ld. Rym. 276.

CONTINENS.—In the Roman law, continuing; holding together. Adjoining buildings were said to *continencia*. The latter form of the word, however, was also used in old English law to signify connection or continuity in the proceedings in an action.

CONTINGENCY—CONTINGENT.

§ 1. An estate, interest, right, liability, or obligation is said to be contingent when its existence depends on an uncertain event, which is called a "contingency." Thus, if A. guarantees B. the payment of a sum by C., the right of B. to receive, and the liability of A. to pay, the amount guaranteed, are contingent on the default of the principal debtor, C.

§ 2. **Remainder.**—The term is chiefly used in conveyancing as applied to remainders (*q. v.*) Where an estate is limited with substitutionary or alternative contingent remainders (as to A. for life, and if he should leave issue male, then to such issue male, in fee, but if he should die without issue male, then to B. in fee), this is called a "contingency with a double" aspect (*q. v.*) Fearne Rem. 225, 373; Wms. Sett. 207.

CONTINGENCY, (in a statute). 30 Me. 384, 388; 47 Id. 557; 65 Id. 534.

CONTINGENCY WITH A DOUBLE ASPECT.—When one event only is expressed by the party, and two events are clearly in his contemplation. This is a construction in favor of the intention, that the intention may not be frustrated. The general rule is, that an interest, to commence on a contingency, shall not take place unless that contingency shall arise. It is in a few cases only that this favor is extended by construction. The exception seems to have been borrowed from the mode in which remainders are limited, and the construction which the limitations of remainders receive; and under which every estate will take place after the preceding estate, without regard to the particular time at which, by the words of the remainder, the estate is to take place. In these cases, the court proceeds on the intention that the determination of every prior or intermediate estate shall accelerate the commencement of the more remote estate. It is on similar grounds of intention that the contingency with double aspect is allowed; for it is allowed on the idea that, by the intent of the testator, the estate limited on a contingency referable to one estate, shall also take place in case the contingency should not arise on which the prior gift is to vest an interest, and then, in point of law, the contingency has a double aspect; provided, by expression, for a contingency annexed to the interest previously limited, and also, by inference and construction of law, for the event that the contingency on which the prior interest is to vest shall never arise.—Wharton.

CONTINGENT, (defined). 5 Barb. 686, 692; 10 *Id.* 296, 388.

CONTINGENT CLAIMS, (against an estate). 32 Me. 460; 7 Allen (Mass.) 430.

— (in statute concerning bankruptcy). 24 Me. 358.

CONTINGENT DAMAGES, (defined). 1 Str. 431.

CONTINGENT DEBTS, (of a bankrupt). 115 Mass. 52.

CONTINGENT DEMAND, (defined). 5 Barb. (N. Y.) 686.

— (in bankrupt law). 2 Gray (Mass.) 111.

CONTINGENT ESTATE.—See CONTINGENCY, § 1.

CONTINGENT ESTATE, (defined). 4 Abb. (N. Y.) App. Dec. 218.

CONTINGENT LEGACY.—One that is bequeathed to a legatee, at a certain age, or if, when, or provided he shall attain that age; if the legatee die before that age, the legacy lapses. The thirty-third section of 7 Will. IV. and 1 Vict. c. 26, enacts: "That where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

CONTINGENT LIABILITY, (in insolvent law). 71 Me. 438; *Id.* 441.

CONTINGENT REMAINDER.—See CONTINGENCY, § 2.

CONTINGENT REMAINDER, (defined). 2 Bl. Com. 169.

CONTINGENT USES.—These properly take effect as remainders and in imitation of contingent remainders. Where an estate is limited previously to a future use, and the future use is limited by way of remainder, it is subject to the rules of the common law, which are, that a vested estate of freehold must precede, in order to support, the remainder, and that a remainder must vest either during the existence of such preceding estate or *eo instanti* that it determines. And herein

these contingent or springing uses (for they have been called by both epithets, and without any great inconsistency, although it creates difficulty in regard to their distinctive classification,) differ from executory devises, which latter do not require any particular estate to support them; that by them a fee-simple or other less estate may be limited after a fee-simple, and that a remainder may be limited of a chattel interest after a particular estate for life created in the same. The following is an example of a contingent use: A use to the first unborn son of A., after a previous limitation to A. for life or for years, determinable on his life; for this does not answer to the notion of either a shifting or a springing use. To create a good springing use, it must be limited at once, independently of any preceding estate, and not by way of remainder, for if so, it is then a contingent and not a springing use, and subject to the laws governing contingent remainders. Thus, springing uses are confined within very narrow limits, and future or contingent uses are placed on exactly the same footing with contingent remainders. Although shifting or secondary uses cannot be classed with future or contingent uses, because of the different modes by which they take effect, yet as a shifting use, when created, may, in point of limitation, be like a contingent remainder, it will, in that case, as well as a strict contingent use (which does not take effect in derogation of any other estate), be subject to the same laws.—*Wharton.*

CONTINUAL CLAIM.—Under the old English law, if a man had a right of entry on land, he might prevent this right from being tolled or taken away by the person in possession dying seized of the land, if he made "continual claim" to the land, *i. e.* if at intervals of a year and a day he either entered on the land, or, in case of threatened violence, went as near the land as he could, and by word claimed the land to be his. The result of making continual claim was that if the person seized died within a year and a day after the claim, the claimant could enter on the heir, instead of being put to his action. (Litt. §§ 414–422.) The doctrine of continual claim was abolished by Stat. 3 and 4 Will. IV. c. 27, §§ 10, 11. See ENTRY.

CONTINUANCE.—

§ 1. In old English practice, the parties to an action, or their attorneys for them, used to

appear in open court; the plaintiff's advocate stated his cause of complaint *vid. roce*; the defendant's advocate his ground of defence; plaintiff's advocate replied; and the altercation continued till the two parties came to contradict one another, or, as it was termed, to an "issue." If this issue was upon a point of law, the judges decided it; if upon a point of fact, it was tried by a jury, or by one of the other modes which prevailed at that period. While this was going on, the officers of the court, who sat at the feet of the judges, took a written minute of the proceedings on a parchment roll, which was called "the record," and was preserved as the official history of the suit, and that alone, the correctness of which could be afterwards recognized and depended on, was the only evidence of the matters stated there, and the court would not allow it to be contradicted. As the proceedings generally occupied more days than one, the court used to adjourn them from time to time; if these adjournments, which were called "continuance," were not made, the suit was at an end, since there was no period at which either party had a right again to call the court's attention to it; and if the continuance, though made, were not entered on the record, the suit was equally at an end, since the record was the only evidence the court would admit of the fact of the continuance. In such a case the action was said to be "discontinued." And latterly when a cause was put down in the list of causes to be tried at a certain time, and from some cause or other it was not then tried, but was adjourned, a minute of such adjournment was entered on the record, which was technically termed "entering a continuance," because such entry signified that the cause was not yet finished, but continued pending. This practice of entering continuances was, however, abolished by Rule 31, Trin. Term, 1853.—*Brown*.

§ 2. In American practice, the adjournment or postponement of the trial of a cause, to another day in the same term of the court, or to a subsequent term. Among the principle causes or grounds for a continuance are, absence of material witnesses, amendments of pleadings changing the nature or scope of the issue, illness of party or counsel, surprise, newly discovered evidence, &c.

CONTINUANCE, (in the common law, synonymous with "prorogation" in the civil). 1 Cow. (N. Y.) 43 n.

CONTINUANCE IN OFFICE, (in a bond). 9 Cranch (U. S.) 212, 239; 16 Fla. 204; 6 Munf. (Va.) 81.

CONTINUANCE OF AN ACTION, (what is not). 6 Watts (Pa.) 528.

CONTINUANCE OF TRESPASS, (damages cannot be recovered for). 19 Wend. (N. Y.) 507, 509.

CONTINUANDO.—In an action of trespass under the old practice, when the trespass was of a continuing nature (e. g. spoiling or consuming a man's herbage with cattle), the declaration might allege the injury to have been committed by continuation from one given day to

another, instead of the plaintiff being compelled to bring separate actions for each day's separate offence; this was called "laying the action with a *continuando*." 3 Bl. Com. 212.

CONTINUANDO, (defined). 2 Mass. 50.

— (laying action with). 4 Wheel. Am. C. L. 202.

CONTINUE A STOCKHOLDER, (of a company). 104 Mass. 577.

CONTINUE HIS SUIT, NOT TO, (in a bond). Cro. Jac. 525.

CONTINUED IN SUCH SERVICE, (in a statute). 2 Chit. Gen. Pr. 10.

CONTINUING AN ACTION, (in a statute). 1 Mass. 508.

CONTINUING AND ABIDING, (in a statute). 12 East 550, 554.

CONTINUING CHARGE, (in succession duties act). L. R. 2 H. L. 63.

CONTINUING CONTRACT.—See CONTRACTS, § 12.

CONTINUING GUARANTY, (defined). 10 Pet. (U. S.) 494, 495; 18 N. Y. 337, 343.

— (what is). 6 Bing. 244, 249; 9 Id. 618; 2 Campb. 412, 413, 436, 437; 12 East 227, 228.

— (what is not). 6 Bing. 276; 2 Chit. 205; 2 Mau. & Sel. 18, 22.

— (notice of acceptance). 5 Wheel. Am. C. L. 531.

CONTINUING HIS SAID ASSAULT THEREAFTER, (not within the meaning of a *continuando*). 2 Mass. 50.

CONTINUING INTEREST, (in succession duties act). L. R. 2 H. L. 63.

CONTINUING OFFENCE, (in by-law under public health act). L. R. 8 C. P. 416.

CONTINUOUS ADVERSE USE, (equivalent to uninterrupted adverse use). 59 Ind. 411.

CONTINUOUS EMIGRANT PASSAGE, (not contract to carry to intermediate station). 4 Sawy. (U. S.) 114.

CONTINUOUS LINE, (what is a). 6 Wend. (N. Y.) 467.

CONTINUOUS USE, of a right of way). 105 Mass. 319.

CONTRA.—Against; contrary to; in opposition with.

CONTRA BONOS MORES.—Against good morals. Contracts *contra bonos mores* are void.

CONTRA FORMAM COLLOCATIONIS.—A writ that issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of an hospital and his convent, to find certain poor men with necessaries, and do divine service, &c., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands.—*F. N. B.* 210; *Reg. Orig.* 238.

CONTRA FORMAM FEOFFAMENTI.—A writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements,

by charter of feoffment from a lord, to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter.—*O. N. B.* 162; *Reg. Orig.* 176.

CONTRA FORMAM STATUTI.—Contrary to the form of the statute in such case made and provided. The usual conclusion of every indictment, &c., brought for an offence created by statute.

CONTRA JUS BELLI.—Contrary to the law of war. *See* 1 Kent Com. 6.

CONTRA JUS COMMUNE.—Contrary to common right, or to the common law.—*Bract.* 48 b.

CONTRA LEGEM TERRÆ.—Contrary to the law of the land. *Mag. Char.* c. 55.

Contra negantem principia non est disputandum (*Co. Litt.* 43): There is no disputing against one who denies first principles.

Contra non valentem agere nulla currit præscriptio: No prescription runs against one unable to act. Thus generally prescription runs only from the time the plaintiff might have brought his action, unless he was at the time subject to disability.

CONTRA PACEM.—Against the peace. It is generally necessary, in all indictments whatsoever, to allege that the offence was committed against the peace. The omission of these words does not, however, necessarily render an indictment, information, inquisition or presentment insufficient.

CONTRA PACEM, (when necessary, in an indictment). 2 *Ld. Raym.* 1034; 6 *Mod.* 128.

—(when not necessary, in an information). 2 *Chit. Gen. Pr.* 169.

—(when necessary, in declaration in tort). 14 *Johns.* (N. Y.) 134, 135; 1 *Ld. Raym.* 38.

CONTRA VADIUM ET PLEGIUM.—Contrary to gage and pledge. *Bract.* 15 b.

Contra veritatem lex nunquam aliquid permittit (2 *Inst.* 252): The law never suffers anything contrary to truth.

CONTRABAND OF WAR.—In international law, this is the name given to such articles as may not be carried by a neutral to a belligerent, because they are calculated to be of direct service to him in carrying on war. The question whether certain goods (other than munitions of

war, as to which there is no question) are or are not contraband, depends partly on the practice of each nation, and partly on stipulations in treaties. (*Man. Int. Law* 352. *See* CONFISCATION; PRE-EMPTION; PRIZE.) Some articles are notoriously and essentially contraband, *i. e.* capable of being used in war only. Other articles are in the opposite extreme, and (excepting by some imaginative application) can never be useful in war at all. Between these two extremes there are many articles said to be *ancipitis usus*, *i. e.* of variable application, usually in peace, but not unfrequently in war. Articles *ancipitis usus* are such articles as provisions, coals, naval stores, timber, tar, and the like. Such articles, if the natural productions of the country conveying them, should be privileged from the confiscation which carrying contraband entails; but this question is at present the subject of no settled law, and the very list of articles *ancipitis usus* has never been completely defined. Nevertheless, all articles *ancipitis usus*, and even articles of use in peace, only become contraband by destination, if attempted to be carried into a blockaded port. Even persons and papers of a diplomatic character may be contraband. The penalty for wilfully carrying contraband, either *in se*, or by destination, is forfeiture of the vessel as well as of the cargo.

CONTRABAND OF WAR, (defined). 1 *Wheat.* (U. S.) 387.

—(what goods are). 1 *Wheat.* (U. S.) 382; 6 *Mass.* 102; 2 *Cow.* (N. Y.) 56.

CONTRACAUSATOR.—A criminal; one prosecuted for a crime.

CONTRACTS.—*LATIN:* *contractus*, from *con*, with, and *traho*, to draw.

§ 1. Simple, special, and of record. —With reference to the modes of their formation, contracts are generally divided into three kinds: simple, or parol contracts, specialty contracts, or contracts under seal, and contracts of record.*

Simple or parol contracts are of two kinds, according as they arise from agree-

**Chit. Cont.* 2. In *Rann v. Hughes* (7 T. R. 370; 3 Burr. 1672), it is said "that all contracts are by the laws of England distinguished into agreements by specialty, and agreements by parol." If English law did not include con-

tracts of record and quasi-contracts among true contracts, as it does, this would be a far better classification than the ordinary one, which is that given in the text. *See* OBLIGATION; QUASI-CONTRACT.

ment between the parties, or from implication of law.

§ 2. **A simple contract arising from agreement**, is where two or more persons agree that one of them is to do or not to do some particular thing, in consideration of something done or to be done by the other. (Chit. Cont. 8.) "Contract," therefore, differs from "agreement" in the primary sense of that word, in including, in addition to the unity of intention and the juridical nature of the subject-matter constituting a simple agreement, the incidents of one of the parties being bound to a future performance or forbearance, and of the other party doing or agreeing to do something in return. On the side of the party so bound to a future performance or forbearance, the expression of his willingness or intention to do it is called a "promise" (*q. v.*) and the performance or forbearance done or promised by the other party, is called the "consideration for his promise." Thus, if A. agrees with B. that he will sell B. goods, and B. pays him \$5 in respect of them, this is a contract of sale; there is a unity of intention between the parties: A. promises to deliver the goods to B., in consideration of B.'s paying him \$5. Leake Cont. 8 *et seq.*; Poll. Cont. 5 *et seq.* See CONSIDERATION; PROMISE; REQUEST.

§ 3. **Express and implied**.—Simple contracts created by agreement are divided, according to the manner in which the agreement appears, into express and implied. Thus, if A. says to B., "Will you sell me your horse for \$50?" and B. says, "I will," this is an express contract; but if I order goods of a tradesman without promising to pay for them, my contract to do so is implied. (See EXPRESS; IMPLIED.) "Implied contracts" must not be confounded with "contracts implied in law" (*infra* § 5), although the terms are sometimes used interchangeably. Leake Cont. 12; Chit. Cont. 55; 2 Bl. Com. 443; *Marzetti v. Williams*, 1 Barn. & Ad. 415.

§ 4. **Written and verbal**.—Simple contracts are also divisible into contracts in writing, and verbal contracts. Contracts are put into writing, either voluntarily, or in pursuance of a rule of law, as in the case of bills of exchange and contracts fall-

ing within the Statute of Frauds (*q. v.*) In either case, the writing is the only admissible evidence of the contract, although extrinsic evidence is admissible for various purposes, *e. g.* to identify the parties and the subject-matter of the contract, or to show intent, that it was made subject to usages of trade, &c. Leake Cont. 103.

§ 5. **Implied in law**.—Simple contracts arising independently of agreement, or contracts implied in law, exist in certain cases where an obligation is created by law for the purpose of setting the parties right, where one of them has suffered loss by doing something for the benefit of the other, or where one of them has wrongfully, or by accident, gained an advantage over the other. The following are the most important examples:

§ 6. If A., being compelled by law, has paid money which B. is ultimately liable to pay, A. may recover it from B. under an implied contract to repay it; as if an executor has been compelled to pay legacy duty for which the legatee is ultimately liable. (Chit. Cont. 587; Leake Cont. 41.) This is called "an action for money paid by the plaintiff for the use of the defendant at his request."

§ 7. Where a person does something for another without having been requested by him to do it, and the latter adopts and takes the benefit of the act, the law implies a contract by him to pay the reasonable value of the other's services. This is called "acceptance of an executed consideration." Chit. Cont. 50.

§ 8. If A. wrongfully takes goods from B. and sells them, or has obtained money from B. by fraud, or by B.'s mistake or the like, B. may sue A. for the amount on an implied contract by A. to pay it to him. This is called "an action for money had and received by the defendant for the use of the plaintiff." (Chit. Cont. 558; Leake Cont. 47.) These forms of actions seem to have been invented partly to give remedy which would not otherwise have been available at common law, partly because the procedure in an action of *assumpsit* (*q. v.*) was often more convenient than that in an action of debt or *tort*.

§ 9. **Specialty contracts**.—A contract under seal, or specialty contract, is created

by the execution of a deed binding the party or parties executing it to a future act or forbearance. (*See DEED.*) Such a contract necessarily involves the element of agreement, but it derives its legal effect solely from the formality of sealing and delivery, and not from the mere fact of agreement (*Leake Cont.* 76); it also involves the element of a promise, (as opposed to a conveyance, appointment, &c.,) and in these two points a contract under seal resembles a simple contract, but they differ in the important respect that no consideration is required to give validity to a contract under seal as between the parties to it. (*See CONSIDERATION*, § 2; *Chit. Cont.* 5; *Leake Cont.* 84.) As regards its effects, also, a contract under seal differs in some respects from a simple contract. *Chit. Cont.* 6; *Leake Cont.* 88. *See COVENANT; DEBT; ESTOPPEL; LIMITATION OF ACTIONS; MERGER.*

§ 10. **Contracts of record** are not really contracts at all, but are transactions which, being entered on the records of certain courts called "courts of record," are conclusive proof of the facts thereby appearing, and could formerly be enforced by action of law as if they had been put in the shape of a contract.* They consist of judgments, recognizances, &c. *See those titles; also, COGNOVIT; DEBT; LIMITATION OF ACTIONS; MERGER; WARRANTS OF ATTORNEY.*

With reference to their nature, contracts are divisible into the following kinds:

§ 11. **A personal contract** is one which depends upon the existence, or the personal qualities, skill or services of one of the parties, such as a contract of mar-

riage, or a contract to paint a picture. It follows, from the nature of a personal contract, that it cannot be assigned (*Chit. Cont.* 671), and that it is discharged by the death of the party on whose personality it is founded. *Leake Cont.* 642. *See, also,* as to the bankruptcy of the contractor, *Id.* 648.

§ 12. **A continuing contract** is one for the performance of several acts from time to time. Thus, a contract to maintain and repair railway wagons for seven years is a continuing contract. *In re Sneezum, Ex parte Davis*, 3 Ch. D. 463.

§ 13. **Executed and executory.**—When a contract has been performed by both parties, it is said to be executed, or when it has been performed by one of the parties, it is executed as far as he is concerned, but so long as something remains to be done by one of the parties, it is said to be "executory" as regards him. (*Chit. Cont.* 136, 591.) When applied to contracts of sale, "executed" and "executory" have peculiar meanings. *See SALE.*

§ 14. **With reference to their objects,** contracts are of innumerable varieties, such as contracts of agency, service, works, insurance, guarantee, contracts of debt, (2 Bl. Com. 465; Sm. Merc. L. 532;) *i. e.* contracts for the payment in future of money; and contracts of sale, *i. e.* contracts by which one person agrees to sell, and the other to buy, certain property. (*See SALE.*) In the case of a sale of goods, the contract is generally restricted to the question of price, quality and time of delivery; but in the case of land, leaseholds, &c., the contract generally contains elaborate provisions (principally in the interest of the vendor) as to the investigation of the title, the delivery of the abstract and requisi-

* This classification—which, by including under the same head "true contracts," "fictitious contracts" and "contracts of record," puts a considerable strain on the meaning of contract—seems, like many other accepted classifications in English law, to be founded on the old rules of pleading. The action of debt was applicable whenever a certain sum of money was due (*F. N. B.* 115g; *Steph. Pl.* 15), whether by simple contract, specialty or judgment; in the case of a judgment recovered in a personal action, the plaintiff could not at common law issue execution on it after a year and a day, but was driven to bring a new action on the judgment. (*Hiscocks v. Kemp*, 3 Ad. & E. 679; *Post. Sci. Fa.*

6; *Williams v. Jones*, 13 Mees. & W. 628. *See* 43 Geo. III. c. 46, § 4; *Leake Cont.* 92.) "Debt," had the technical sense of an obligation to pay a certain sum of money whether created by contract or not, and in this sense debts are correctly divided by the old writers into debts of record, debts by specialty and debts by simple contract. (2 Bl. Com. 465. *See DEBT.*) But as a debt, in the usual sense of the word, is an obligation to pay money voluntarily entered into by the debtor, in other words, created by contract, legal writers seem to have considered it necessary to classify contracts as if they were the only source of debts in the technical sense, namely, into contracts of record, by specialty and simple

tions (*q. v.*), and the power of the vendor to rescind the contract if he cannot show a good title. When a person enters into a contract for the sale of land or leaseholds without making these stipulations, he is said to have entered into an open contract. Greenw. Conv. 15.* See, also, NECESSARIES; RESTRAINT OF MARRIAGE; RESTRAINT OF TRADE; VENDORS AND PURCHASERS.

§ 15. In sense of "agreement."—Contract is also sometimes used in a sense similar to that of "agreement" in its primary sense, namely, the common intention of two persons with regard to a certain subject. Thus, the phrase "contract of sale" frequently denotes the ordinary transaction of A. delivering goods to B., and B. paying the price to A. at the same instant. Here there is no true contract, for "contract" implies a promise to be performed at a future time (*supra*, § 2). It is in fact merely a sale, not a contract of sale. (Benj. Sales 227.) The old writers more accurately termed the transaction a "bargain and sale" (*q. v.*); Shep. Touch. 224. See DISCHARGE; PERFORMANCE; RELEASE; SALE; SATISFACTION.

CONTRACT, (defined). 11 Pet. (U. S.) 420, 572; 4 Wheat. (U. S.) 122; 9 Cal. 81; 39 Conn. 45, 49; 93 Ill. 415, 449; 4 Gill & J. (Md.) 5; 16 Johns. (N. Y.) 233, 248; 25 Barb. (N. Y.) 204, 207; 2 Hill (N. Y.) 550; 4 Id. 442, 456; 30 Tex. 422; 2 Kent Com. 449; 1 Pars. Cont. 6; 2 Bl. Com. 442; 2 Steph. Com. 108.
 — ("executed" and "executory" defined). 6 Cranch (U. S.) 87, 136.
 — (the requisite assent). 62 Me. 148.
 — (when consummated). 6 Wend. (N. Y.) 103, 117.
 — (when includes "bond"). Wilberf. Stat. L. 123.
 — (when does not include "judgment"). 54 Ala. 271.
 — (distinguished from "bills and notes"). 4 Hill (N. Y.) 442, 456.
 — (distinguished from "deed"). 2 Hill (N. Y.) 550.
 — ("dependent" and "independent," distinguished). 3 Wend. (N. Y.) 356, 360.
 — (compact between States is). Baldw. (U. S.) 60; 13 How. (U. S.) 518; 1 McLean (U. S.) 337; 1 Sumn. (U. S.) 276; 8 Wheat. (U. S.) 1.
 — (corporate charter is). 3 How. (U. S.) 133; 6 Id. 301; 15 Id. 304; 4 Pet. (U. S.) 514;

3 Wall. (U. S.) 51, 74; 4 Wheat. (U. S.) 316, 418; 1 Greenl. (Me.) 79; 4 Gill & J. (Md.) 1.
 CONTRACT, (legislative grant is). 6 Cranch (U. S.) 87; 9 Id. 43; 3 Wend. (N. Y.) 588, 609.
 — (marriage is not, when). Deady (U. S.) 268.
 — (when mere notice is not). 6 Robt. (N. Y.) 358.
 — (open account is not). 46 Ga. 605.
 — (passenger ticket is not). 17 N. Y. 306.
 — (when receipt is). 8 Barb. (N. Y.) 205; 4 Lans. (N. Y.) 76.
 — (when receipt is not). 48 Barb. (N. Y.) 511, 520.
 — (recognizance is not). 7 Kans. 394.
 — (when a statute is). 3 Cranch (U. S.) 1, 70; 6 Id. 87, 127, 131; 7 Id. 164; 1 Wall. (U. S.) 116; 4 Id. 143, 156; 16 Conn. 149; 17 Id. 79.
 — (when a statute is not). 10 How. (U. S.) 402, 511; 26 Miss. 47; 47 N. Y. 501; 6 Serg. & R. (Pa.) 322; 5 Watts & S. (Pa.) 403, 418.
 — (what is a single). 20 Wend. (N. Y.) 431, 434.
 — (what is a written, within rule as to parol proof to vary). 3 Abb. (N. Y.) App. Dec. 139.
 — (actions on, in statute of limitations). 14 Johns. (N. Y.) 479, 480.
 — (by corporations). 9 Pet. (U. S.) 565; 6 Wheat. (U. S.) 593; 5 Cow. (N. Y.) 538, 540; 4 Hill (N. Y.) 442.
 — (by the legislature). 6 Cranch (U. S.) 87, 135; 7 Id. 164; 6 Wheat. (U. S.) 593; 7 Cow. (N. Y.) 585, 604.
 — (does not necessarily import written instrument). 2 Hill (N. Y.) 550.
 — (of an indorser). 3 Ohio St. 229.
 — (in companies act). 7 Ch. D. 75, 113.
 — (statute of crimes). 3 Ohio St. 229.
 — (in practice act). 67 Ind. 174.
 — (in pleading). 2 Hill (N. Y.) 550.
 — (in a statute). 54 Ala. 271.
 — (in statute of frauds). 7 Kan. 394; 3 Pick. (Mass.) 83, 94; 3 Taunt. 169, 175.
 — (in Texas constitution). 30 Tex. 422.
 — (under U. S. constitution). 2 Pet. (U. S.) 380; 3 Id. 239; 4 Id. 529; 4 Wheat. (U. S.) 122, 209, 651, 657, 682, 706; 5 Id. 420.
 CONTRACT FOR SALE—SELL AND CONVEY, (in power of attorney). 6 Serg. & R. (Pa.) 146, 149.
 CONTRACT, IMPAIRING OBLIGATION OF, (in U. S. constitution). 1 Kent Com. (11 edit.) 445.
 CONTRACT IN ISSUE, (in a statute). 42 Vt. 403.
 CONTRACT IN WRITING, (in partnership act). 5 Ch. D. 458.

CONTRACT OF BENEVOLENCE.

—A contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

*The English Conveyancing Act, 1881, supplementing the provisions of the Vendor and Purchaser Act, 1874, makes certain conditions incident to contracts for the sale of freehold and leasehold interests in land, unless the parties otherwise agree. These conditions consist mainly of provisions which are inserted as a matter of

course for the protection of the vendor in an ordinary contract of sale, and make it safer to enter into an "open contract" than was formerly the case. The act also provides for the completion of a contract of sale by the personal representatives of the deceased vendor.

CONTRACT OF LIFE INSURANCE, (defined). 50 Wis. 611.

CONTRACT OF INSURANCE, (ingredients necessary in). 4 Robt. (N. Y.) 151.

CONTRACT OF MARRIAGE, (is a civil contract). 7 Ind. 389; 9 *Id.* 37.

CONTRACT, REAL, (defined). 3 Rawle (Pa.) 325, 326.

CONTRACTED AND AGREED, (in a devise). Cowp. 94, 97.

CONTRACTING MARRIAGE, (by a minor). 37 Mich. 65.

CONTRACTION.—The shortening of a word by the omission of some letter or letters therein. For a list of contractions formerly in use, see BURRILL.

CONTRACTION OF WORDS, (in a bill of particulars). 2 Halst. (N. J.) 70, 71.

CONTRACTOR.—(1) One who is a party to a contract. (2) One who engages to perform some public or corporate work, such as laying out or paving a street, building a railroad, canal, &c., or who binds himself, for a fixed sum, to furnish materials therefor.

CONTRACTOR, (defined). 71 Me. 322; 5 How. (N. Y.) Pr. 454; 12 N. Y. 628, 631.

—— (when includes "subcontractor"). 5 How. (N. Y.) Pr. 454; 31 Wis. 451.

—— (distinguished from "laborer"). 25 Minn. 522.

CONTRACTORS, (in a statute). 31 Wis. 451.

CONTRACTUS.—A contract; contracts.

CONTRACTUS BONAE FIDEI.—In Roman law, those contracts (*e. g.* *emptio venditio*) which admitted of equitable defences and other equitable considerations; they were opposed to contracts *stricti juris* (*e. g.* *stipulatio*) which admitted no such equitable defences or considerations, at least until their original character was compelled by statute to admit them. All the praetorian contracts were *contractus bonae fidei*, but some of the *civiles contractus* were also *bonae fidei*.

CONTRACTUS CIVILES.—In Roman law, those contracts (*e. g.* *emptio venditio*) which were actionable either in virtue of the old common law or by virtue of any particular statute; they were opposed to the *contractus praetorii* which were actionable only through the aid of the praetor, who (for that purpose) had to adopt the existing legal forms of actions.

Contractus est quasi actus contra actum (2 Co. 15): A contract is, as it were, act against act.

Contractus ex turpi causa vel contra bonos mores, nullus: A contract arising from a base consideration, or against morality, is void.

Contractus legem ex conventionem accipiunt: Contracts receive legal sanction from the agreement of the parties.

CONTRADICT.—To contradict a witness is to prove some fact as to which he has testified to be otherwise than as stated by the witness. A party may contradict his own witness as to a particular fact, but he cannot, as a general rule, impeach him. See IMPEACHMENT.

CONTRADICTION IN TERMS.—A phrase of which the parts are expressly inconsistent, as *e. g.* "an innocent murder," "a fee-simple for life."

CONTRAESCRITURA.—In Spanish law, a counter-letter. An instrument usually executed secretly for the purpose of showing that an act of sale, or some other public instrument, has a different purpose from that imported on its face. Acts of this kind, though binding on the parties, have no effect as to third persons.—*Bouvier*.

CONTRAFACION.—A counterfeiting.—*Blount*.

CONTRAINTÉ PAR CORPS.—In French law, the civil process of arrest of the person, which is imposed upon vendors falsely representing their property to be unincumbered, or upon persons mortgaging property which they are aware does not belong to them, and in other cases of moral heinousness.

CONTRAMANDATIO PLACITI.—A respiting or giving a defendant further time to answer, or a countermand of what was formerly ordered. Leg. Hen. I. c. 59.

CONTRAMANDATUM.—A lawful excuse, which a defendant in a suit by attorney, alleges for himself to show that the plaintiff has no cause of complaint.—*Blount*.

CONTRAPLACITUM.—A counter plea.

CONTRAPOSITIO.—A plea or answer.—*Blount*.

CONTRARIENTS.—This word was used in the time of Edw. II. to signify those who were opposed to the government, but were neither rebels nor traitors.—*Jacob*.

Contrariorum contraria est ratio (Hob. 344): The reason of contrary things is contrary.

CONTRAROTULATOR.—A controller. One whose business it was to observe the money which the collectors had gathered for the use of the king or the people.—*Cowell*.

CONTRAROTULATOR PIPÆ.—An officer of the exchequer that writeth out summons twice every year, to the sheriffs, to levy the rents and debts of the pipe.—*Blount*.

CONTRARY INTENTION, (in a statute). L. R. 10 Eq. Cas. 376.

CONTRARY TO LAW, (in conclusion of an indictment). 1 Blackf. (Ind.) 63, 318.

— (what verdict is). 18 Ind. 44.

CONTRARY TO THE FORM OF THE STATUTE, &c., (when necessary, in a declaration). 1 Gall. (U. S.) 26, 30; 3 Barn. & C. 186, 190; 6 Com. Dig. 348; 2 East 333; 7 *Id.* 516, 521; 1 *Ld.* Raym. 150, 343; 5 Mod. 307, 308; Willes 597, 599; Yelv. 116.

— (when necessary in indictment). 2 Mass. 116, 131; 4 *Id.* 464; 10 *Id.* 335; 4 Halst. (N. J.) 374; 13 Wend. (N. Y.) 159, 177; 2 Binn. (Pa.) 332, 339; 2 Browne (Pa.) 257, 260; 3 Yeates (Pa.) 407, 413; 6 Wheel. Am. C. L. 36; 7 *Id.* 297; Andr. 115; 4 Com. Dig. 687, n. 5, 688, 690; 1 Cro. 231; 2 Doug. 441; 2 Hale P. C. 170, 172; 2 Leach C. C. 535, 622; 2 *Ld.* Raym. 1104, 1163; Moo. C. C. 313; 4 Mod. 162, 166; 8 *Id.* 11, 12; 1 Ry. & M. 27; 1 Saund. 249.

— (when necessary in an information). 2 Chit. Gen. Pr. 168; 2 Mod. 299, 301.

— (when necessary in a presentment by a magistrate). 13 East 258, 260.

— (when it has reference to a single statute it must be in the singular). 2 Harr. & G. (Md.) 407.

— (not sufficient to allege, "against the law in such case provided"). 11 Mass. 273, 279.

CONTRAT.—In French law, contracts are of the following varieties: (1) *Bilateral*, or *synallagmatique*, where each party is bound to the other to do what is just and proper; or (2) *unilateral*, where the one side only is bound; or (3) *commutatif*, where one does to the other something which is supposed to be an equivalent for what the other does to him; or (4) *aléatoire*, where the consideration for the act of the one is a mere chance; or (5) *contrat de bienfaisance*, where the one party procures to the other a purely gratuitous benefit; or (6) *contrat à titre onéreux*, where each party is bound under some duty to the other.—*Brown*.

CONTRATINERE.—To withhold or hold against.—*Whishaw*.

CONTRAVENTION.—An act done in violation of a legal condition or obligation; particularly any act by an heir of entail in opposition to the provisions of the deed of entail; also, the action founded on the breach of law-burrows.—*Bell Dict.*

CONTRECTATIO.—An improper meddling with or removal of the things of another. Its use in the civil law is explained in the following maxim:

Contrectatio rei alienæ, animo furandi, est furtum (Jenk. Cent. 132): The touching or removing of another's property, with an intention of stealing, is theft.

CONTREFACON.—In the French law, the offence of printing or causing to be printed a book, the copyright of which is held by another, without authority from him.—*Merl. Repert.*

CONTRE-MAITRE.—In French marine law, the officer second in command of a vessel,

who assumes command in case of the absence or disability of the master.

CONTRIBUTE, (to a fund). 9 Cush. (Mass) 166.

CONTRIBUTING, (in a statute concerning sale of liquor). 66 Me. 472.

CONTRIBUTION.—

§ 1. In general.—Where one person has sustained some loss which would have fallen upon others as well as upon himself, if it had not been diverted from them at his expense, or where a payment has been made out of one property when it might have been divided between it and another property, payment by the other persons or property of the proportion which they or it ought originally to have borne, is called "contribution."

§ 2. Contribution by sureties.—The commonest instance of contribution by persons occurs in the case of co-sureties; thus, if A., B. and C. make themselves liable for D. to the extent of \$300, and A. is compelled to pay the whole amount, he is entitled to payment (or contribution) of \$100 from B. and \$100 from C. (Lind. Part. 737; *Dering v. Winchelsea*, 1 Cox 318; 1 White & T. Lead. Cas. 89; North British and Mercantile Ins. Co. v. London, Liverpool and Globe Ins. Co., 5 Ch. D. 569.) There is no right of contribution between wrongdoers. *Merryweather v. Nixon*, 8 T. R. 186. See CONTRIBUTORY.

§ 3. Contribution by estate, &c.—The other kind of contribution frequently occurs in the administration of the assets of a deceased person; thus, if a testator directs his real estate (value \$10,000) and his personal estate (value \$5000) to be applied in payment of his debts, which amount to \$1500, each contributes ratably, *i. e.* \$1000 is paid out of the real estate and \$500 out of the personalty. So, if several properties are subject to one mortgage, and on the death of the mortgagor they devolve on different persons, each property must contribute ratably towards payment of the mortgage debt according to its value. Wats. Comp. Eq. 667; 2 Fish. Mort. 699 *et seq.*

§ 4. Contribution in general average.—A similar kind of contribution occurs in the case of general average, where several persons have to contribute, and the amount of each person's contribution de-

depends on the value of the goods belonging to him in the ship. See ADJUSTMENT, § 2; AVERAGE, § 3; CONTRIBUTORY; EXONERATION; MARSHALLING; QUASI-CONTRACT; SUBROGATION.

CONTRIBUTION, (doctrine of, by sureties). 3 Car. & P. 467, 469.

CONTRIBUTIO FACIENDA.—A writ that lay where tenants in common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make their contribution.—Reg. Orig. 175; F. N. B. 162.

CONTRIBUTIVE NEGLIGENCE, (of parents, in accidents to children). 68 Me. 552.

CONTRIBUTORY.—

§ 1. In the English law, a person who, on the winding-up of a company, is bound to contribute to its assets for the payment of its debts. (Companies Act, 1862, § 74.) One of the first duties of the court or the liquidators after the winding-up has been definitely commenced is to settle the list of contributories, (Lind. Comp. 1289; Thr. Jt. S. Co. 184, 271. See form of list, general rules under Companies Act, 1862, form 25.) a process which involves that of ascertaining the liability of persons included in it.

§ 2. Persons who are contributories in their own right are distinguished from those who are contributories as the representatives of or as being liable for the debts of others—such as the executors, husbands, trustees in bankruptcy, &c., of contributories in their own right. Lind. Comp. 1295.

§ 3. By the Companies Act, 1862, § 38, as regards companies formed under the act, every person who was a member at the commencement of the winding-up, and every person who had been a member within one year prior to that time, is liable to be put on the list of contributories, but no past member is liable to contribute in respect of any debts of the company contracted after the time at which he ceased to be a member, nor is he liable to contribute at all, unless the existing members are unable to satisfy the contributions required of them.

§ 4. A. and B. lists.—In order to carry out these provisions, the list of contributories is divided into two parts: The A. list, containing the names of the present members, hence called "A. contributories;" and the B. list, containing the names of persons who have been members within one year before the commencement of the winding-up, hence called "B. contributories." Thr. Jt. S. Co. 157. See ASSESSMENT, § 3; BALANCE ORDER; CALL.

CONTRIBUTORY, (in a statute). L. R. 2 Eq. Cas. 379.

CONTRIBUTORY NEGLIGENCE.—See NEGLIGENCE.

CONTROLLER.—An overseer or officer appointed to examine and verify the accounts of

other officers. See 5 and 6 Vict. c. 103; also, COMPTROLLER.

CONTROVER.—One who devises or invents false news. 2 Inst. 227.

CONTROVERSY.—A dispute between two or more persons; a civil action or suit, either at law or in equity.

CONTROVERSY BETWEEN THE PARTIES, (an indictment for battery is not). 1 Com. Dig. 661, n.

CONTOVERT.—To deny, or oppose by reasoning; to contest either by word of mouth or in writing.

CONTUBERNIUM.—The union of slaves, with their master's consent. The children of such unions were the property of their parents' owners. Sand. Just. (5th edit.) 35.

CONTUMACY.—Where any person having been duly cited to appear in an ecclesiastical court, or required to comply with the lawful order of any such court, neglects or refuses to appear, or neglects or refuses to obey the order, or where any person commits a contempt in the face of the court, he is guilty of contumacy. Contumacy is punishable by imprisonment. Stat. 53 Geo. III. c. 127; Phillim. Ecc. L. 1417. See DE CONTUMACE CAPIENDO.

CONTUMAX.—An accused person who refuses to appear in answer to the accusation; an outlaw.

CONTUTOR.—In the civil law, a co-tutor.

CONUBIUM.—In the Roman law, the right of intermarriage between two persons; the marriage itself was contracted by the consent of the parties followed by the *deductio in domum* of the wife, the other formalities of the law being also observed, when there were any. People might intermarry without having the *conubium*; but the effects of such a marriage were limited, the children not being in the *potestas* of the parent, nor taking the quality of the father, but following the mother's condition. The right of intermarriage was frequently conceded to foreign States; and some general statutes were passed (e. g. *Lex Aelia Sentia*) to enable Latin freedmen to intermarry with Roman citizens, and to cure certain mistakes apt to be committed in such latter kinds of marriages. See CONCUBINAGE.

CONUSANCE.—

§ 1. The primary meaning of conusance is acknowledgment. Thus, a fine *sur conusance de droit* was a fine founded on an acknowledgment of right (see FINE); so, in an action of replevin the conusance was a plea by which the defendant admitted that he took the goods for which the action was brought. See REPLEVIN.

§ 2. Conusance also signifies jurisdiction. "Conusance of pleas" is a franchise granted to an inferior court, giving it jurisdiction to entertain

certain proceedings. Thus, the universities of Oxford and Cambridge have conusance in certain personal actions. (See COURTS OF THE UNIVERSITIES.) When an action for a cause within the conusance of an inferior court of record is brought in a superior court, it may put forward a claim of conusance, and, if it is allowed, the action is remitted to the inferior court. Archb. Pr. 1431. See COGNIZANCE.

§ 3. Conusance sometimes means judicial notice. Litt. § 366. See NOTICE.

CONUSANT.—Knowing or understanding.

CONUSOR.—See COGNIZOR.

CONVENABLE.—In old English law, agreeable, convenient, or suitable.—*Cowell*.

CONVENE.—A civil law term, signifying to sue.

CONVENIENCES, outhouses, &c., (power to turnpike company to erect). 1 Dowl. & Ry. 202, 203.

CONVENIENT, (defined). 1 Munf. (Va.) 110, 117; 1 McC. (S. C.) Ch. 148.

— (in a will). 6 Ves. 529; 8 *Id.* 554.

CONVENIENT PLACE, (defined). 4 Zab. (N. J.) 49.

CONVENIENT PRIVILEGE OF PASSING, (equivalent to way or road). 45 Me. 281.

CONVENIENTLY, (in a will). 19 Ves. 390 (*l.*).

CONVENT.—The fraternity of an abbey or priory, as *societas* is the number of fellows in a college. A religious house, now regarded as a merely voluntary association, not importing civil death. *In re Metcalfe*, 33 L. J. Ch. 308.

CONVENTICLE.—A private assembly or meeting for the exercise of religion. The word was first an appellation of reproach to the religious assemblies of Wycliffe in the reigns of Edward III. and Richard II., and was afterwards applied to a meeting of dissenters from the established church. As this word, in strict propriety, denotes an unlawful assembly, it cannot be justly applied to the assembling of persons in places of worship licensed according to the requisitions of law.—*Wharton*.

CONVENTIO.—An agreement or covenant.

CONVENTIO IN UNUM.—The agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the solicitation or proposal emanating from the one, and followed by the consension or agreement of the other. If the second party does not assent to the proposal in the sense in which it is made, he is not bound by his assent unless his mistake is unreasonable.

Conventio privatorum non potest publico juri derogare (Wing. 746): An agreement of private persons cannot affect public right.

Conventio vincit legem (Dig. 2): An agreement overcomes law. 6 Taunt. 430.

CONVENTION.—

§ 1. In English law, an extraordinary assembly of the Houses of Lords and Commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei*, as the parliament which restored Charles II. and that which disposed of the crown and kingdom to William and Mary.

§ 2. In American law, a meeting of delegates of the people elected to choose candidates to be voted for at a coming election, or to prepare a new constitution. See CONVENTIO; CONVENTIONS, for further meanings.

CONVENTIONAL ESTATES.—Freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and arise from the operation and construction of law.

CONVENTIONE.—A writ for the breach of any covenant in writing, whether real or personal.—*Reg. Orig.* 115; *F. N. B.* 145.

CONVENTIONS.—Compacts or treaties with foreign countries as to the apprehension and extradition of fugitive offenders. See EXTRADITION.

CONVENTUAL CHURCH.—That which consists of regular clerks, professing some order of religion, or of dean and chapter, or other societies or spiritual men.

CONVENTUALS.—Religious men united in a convent or religious house.—*Cowell*.

CONVENTUS.—In old English law, an assembly; a convent.

CONVENTUS JURIDICUS.—A Roman provincial court for the trial of civil causes.

CONVERSANT.—Acquainted with, or familiar with a thing; well informed upon a subject.

CONVERSANT, (with a particular place). Barnes 162.

CONVERSATION, (how far evidence). 15 Wend. (N. Y.) 381, 384.

CONVERSE.—The transposition of the subject and predicate in a proposition, as "Everything is good in its place." *Converse*, "Nothing is good which is not in its place."—*Wharton*.

CONVERSION.—**LATIN:** *con*, with, and *vertere*, to turn.

§ 1. **Equitable: actual.**—In equity, conversion is the operation of changing

the nature of property. It is either actual or constructive. Actual conversion is the act of converting land or other property into money, by selling it, or of converting money into land by buying land with it. Conversion in this sense is frequently directed by wills and settlements, or ordered by a court in administering an estate.

§ 2. **Constructive conversion** is a fictitious conversion, which is assumed in certain cases to have taken place in order to carry out the intention of the parties. The constructive or equitable conversion of land into money (realty into personalty), and *vice versa*, takes place when an actual conversion has been directed or agreed to, but not actually carried out. The effect of this doctrine is that land directed to be sold is treated and devolves as if it were personalty, and *vice versa*. Thus, if land is directed by a will to be sold, and the proceeds to be paid to A., and A. dies before the sale, the land goes to A.'s personal representatives, and not to his heirs. (Haynes Eq. 353; Snell Eq. 140; Fletcher v. Ashburner, 1 Bro. C. C. 497; 1 White & T. Lead. Cas. 741.) But where the trust or power of sale is discretionary or conditional, no constructive conversion takes place, and the property retains its original character until it is actually converted. Wats. Comp. Eq. 105.

§ 3. Constructive conversion takes place from the death of a testator, in the case of a will, and in the case of a deed from the date of execution. Snell Eq. 142.

§ 4. **Double.**—Sometimes a double conversion, as land into money, and the money again into land, is directed. In this case, the property is to be considered in general, as in that state in which it is ultimately to be converted; in the case supposed, therefore, the property would be treated as land. Wats. Comp. Eq. 100.

§ 5. **Out and out, or to all intents.**—Conversion out and out, or conversion to all intents, is where the testator meant to give the produce of real estate the quality of personalty to all intents, *i. e.* in any event, as opposed to conversion for the purposes of the will only. The distinction is of importance in the event of some of the dispositions of the property failing by

lapse, or otherwise. Thus, if a testator simply gives the proceeds of real estate to several legatees, and one of them dies in the testator's lifetime, his share goes to the testator's heir-at-law, while if the testator shows an intention that the real estate is to be considered as personalty, whether the expressed purposes of his will take effect or not, then the conversion is "out and out," and any lapsed share goes to the testator's next-of-kin. See, further, as to this doctrine, under title, RESULT.

§ 6. **Retrospective conversion** takes place where a person (*e. g.* a lessee) has an option of purchasing the land, and declares his option after the death of the owner (lessor). Here, the purchase-money goes to the personal representatives of the lessor, as if the option had been exercised during his lifetime.

§ 7. **Conversion of chattels.**—At common law, conversion is that tort which is committed by a person who deals with chattels not belonging to him, in a manner which is inconsistent with the rights of the lawful owner. Thus, if a person in possession of goods belonging to another, wrongfully refuses to deliver them up to him, or sells, disposes of, parts with, or destroys them, he is guilty of a conversion. The remedy of the person injured is either by recaption (*q. v.*) or by action. If he merely claims damages, the old rule would still seem to apply, namely, that the judgment vests the property of the goods in the defendant (Broom Com. L. 806), but the plaintiff may, if he likes, claim a return of the goods in specie, and a judgment to that effect is enforceable. See DETINUE; TROVER.

§ 8. **Conversion of joint and separate estates in bankruptcy.**—In the English law of bankruptcy "it is competent for solvent partners to make any arrangement which they think proper with respect either to the joint property of the firm or the separate property of the persons constituting it, and to alter the character of the property so as to convert joint into separate property, and *vice versa*; and every such agreement, if made *bond fide*, will bind their creditors, and in the event of bankruptcy, the property will be distributable as joint or separate estate according to the character which it then bears as between the partners themselves." Robs. Bankr. 587; Lind. Part. 1151. See JOINT.

§ 9. Joint debts also may be converted into separate debts, and *vice versa*. Thus, if an actor

is brought against one partner alone for a joint debt, and judgment is obtained before the bankruptcy, the joint debt will be converted into a separate debt against that partner. *Robs. Bankr.* 605, 607.

CONVERSION, (defined). 19 *Conn.* 319; 71 *Me.* 565; 10 *Cush. (Mass.)* 416.

—— (what constitutes). 36 *Me.* 436; 7 *Johns. (N. Y.)* 254, 257; 10 *Id.* 172; 5 *Cow. (N. Y.)* 323; 9 *Wend. (N. Y.)* 167; 23 *Id.* 462.

CONVEY—CONVEYANCE.—

Apparently from the French: *conveyer*, to accompany (con with, *voie*; LATIN: *via*, a way); hence to convey, take safely from one place to another, convey. (2 *Diez* 455.) "Conveyance," in the sense of a transfer of property, seems to be a comparatively modern term, the old word being "assurance" (*q. v.*) Coke used "conveyance" as signifying that part of a pleading which serves as an explanation or introduction to the material facts. *Co. Litt.* 303a.

§ 1. In the widest sense of the word a conveyance is a mode by which property is conveyed or voluntarily transferred from one person to another by means of a written instrument and other formalities. It also signifies the instrument itself. Conveyances are of three classes: by matter of record, by matter in *pais*, and by special custom. (2 *Bl. Com.* 294, 344, where private acts of parliament are treated of under the head of conveyance.) As to conveyances generally, see the works of Elphinstone, Davidson, Bythewood and Jarman.

§ 2. By matter of record.—Conveyances by matter of record are such as are substantiated by a court of record. The only examples of this class in use at the present day in England, are royal grants and vesting orders (*q. v.*) Fines and recoveries (*q. v.*) belonged to this class before their abolition.

§ 3. By matter in *pais*.—Conveyances by matter in *pais* are such as only require the act or consent of the parties themselves, testified by the proper formalities. They are of three kinds, according as they operate by the common law, by the statute of uses, or under certain modern statutes.

§ 4. At common law.—Conveyances at common law are said to be "original" or "primary" when they transfer the property without reference to a previous conveyance, and "derivative" or "secondary" when they follow a previous conveyance and take effect with reference to it. To the former class belong conveyances by feoffment, gift (of estates tail), grant (of incorporeal hereditaments), lease, exchange, partition and assignment; to the latter class belong conveyances by

confirmation, release, surrender and defeasance. See the various titles.

§ 5. Under statute of uses.—Conveyances under the statute of uses (*q. v.*) are those which derive their force from the Stat. 27 Hen. VIII., by which the use or beneficial interest in land is in certain cases converted in the legal possession and ownership.

§ 6. Conveyances of this kind are said to operate with transmutation of possession, where the possession of the land is first transferred by a conveyance taking effect independently of the statute of uses, and the statute then transfers the possession to the *cestui que use*. To this class belong the obsolete feoffment to uses and the modern deed of grant to uses, in each of which the land is conveyed to a feoffee or grantee, and either by the same or by a separate instrument (whether contemporaneous or subsequent) uses are declared in favor of other persons to whom the legal possession and ownership are transferred by force of the statute. Examples of such conveyances occur in a strict settlement, in which power is usually given to the tenant for life (the husband) to grant leases for twenty-one years. This is done by conveying the land to certain persons (called the "trustees of the powers") to the uses of the settlement, and by giving the tenant for life a power to appoint the land by way of lease for any term not exceeding twenty-one years. (*Wms. Sett.* 37; 3 *Dav. Prec. Conv.* 480, 1005.) When fines and recoveries were employed as modes of conveyance, any complicated limitations required (as in settlements) were effected by deeds specifying the uses to which the land was to be held. If the deed was made previously to the fine or recovery, it was called "a deed to lead the uses"; if subsequently, "a deed to declare the uses." 2 *Bl. Com.* 363. See POWER.

§ 7. Conveyances are said to operate without transmutation of possession where nothing but the use passes, until the statute takes effect; these include the bargain and sale, the covenant to stand seized, and the lease and release. 1 *Hayes Conv.* 76; 2 *Id.* 74, n. See those titles.

§ 8. Under modern statutes.—Conveyances under modern English statutes include (1) the release under the Stat. 4 and 5 Vict. c. 21 (see LEASE AND RELEASE); (2) the modern deed of grant under Stat. 8 and 9 Vict. c. 106 (see GRANT); (3) disentailing deeds and conveyances by married women under Stat. 3 and 4 Will. IV. c. 74 (see DISENTAILING DEED); (4) registered transfers under the Land Transfer Act, 1875 (see LAND REGISTRIES); and (5) conveyances of land to companies under the Lands Clauses Consolidation Act, 1845; transfers of ships by bill of sale under the Merchant Shipping Act, &c. Some writers include alienation by devise among conveyances (2 *Bl. Com.* 373; 1 *Steph. Com.* 588); but this is contrary to the usual meaning of the word.

§ 9. By special custom.—Conveyances by special custom are employed for aliening and dealing with copyhold lands and such customary

estates as are holden in ancient demesne or in manors of a similar nature. The usual method is by surrender followed by admittance. 2 Dav. Prec. Conv. 198. See ADMITTANCE; BARGAIN AND SALE, § 2; COVENANT; GRANT; SURRENDER; USE.

§ 10. In the narrower sense of the word, "conveyance" signifies the instrument employed to effectuate an ordinary purchase of freehold land (*e. g.* the modern deed), as opposed to settlements, wills, leases, partitions, &c.

CONVEY, (an estate). 3 A. K. Marsh. (Ky.) 618.

—— (by mortgage). 45 Miss. 226.

—— (consideration not implied). 13 Barb. (N. Y.) 542.

—— (construction of agreement to). 29 Conn. 356, 365; 1 Cow. (N. Y.) 711; 6 *Id.* 13; 1 Edw. (N. Y.) 1; 11 Vt. 549.

—— (in a covenant). 1 Vern. 284.

—— (in a deed). 3 Mar. 621.

—— (in deed or agreement). 4 Wheel. Am. C. L. 249.

—— (in deed of settlement). 3 Gr. (N. J.) Ch. 512.

—— (in a deed, equivalent to "grant"). 3 A. K. Marsh. (Ky.) 618, 621.

—— (power to). 45 Miss. 226, 246; 5 Johns. (N. Y.) 58.

CONVEY A FARM TO A. ON A CERTAIN DAY, (construed). 7 Wend. (N. Y.) 129, 131.

CONVEY AN ESTATE, (power to). 2 Cow. (N. Y.) 195, 233.

CONVEY AND DEVISE, (relates to real, not personal property). 21 Barb. (N. Y.) 551, 561.

CONVEY AND SETTLE LANDS, (in a covenant). 3 Atk. 322, 329.

CONVEY ANY REAL ESTATE OR PERSONAL ESTATE IN THEIR POSSESSION, (in the act of incorporation of a bank). 5 Wend. (N. Y.) 590, 594.

CONVEY LAND, (in an agreement). 10 Johns. (N. Y.) 297, 300; 6 Cow. (N. Y.) 13, 17.

—— (in a covenant to). 3 Wend. (N. Y.) 249, 250.

—— (in a will). 3 Johns. (N. Y.) Cas. 174, 176.

CONVEY LAND BY GOOD AND SUFFICIENT WARRANTEE DEED, (in a covenant). 4 Paige (N. Y.) 628, 638.

CONVEY REAL ESTATE, (defined). 29 Conn. 356, 365.

CONVEYANCE, (defined, necessity of acknowledgment). 5 Mass. 472, 474; 23 Minn. 34; 45 Miss. 245; 54 *Id.* 104.

—— (what is). 22 M. n. 532.

—— (when includes leases). 47 Cal. 242.

—— (when includes mortgages). 46 Cal. 603; 11 Iowa 375.

—— (in an agreement to convey land). 2 Serg. & R. (Pa.) 498.

—— (in a statute). 45 Superior (N. Y.) 404, 410.

—— (in California Civil Code). 46 Cal. 604.

—— (in statute of bankruptcy). 3 Mass. 487.

CONVEYANCE, (in registry act). 49 Cal. 193, L. R. 10 Ch. App. 12.

—— (power to sue for or demand). 10 Pet. (U. S.) 182.

CONVEYANCE, LAWFUL DEED OF, (in an agreement, defined). 2 Serg. & R. (Pa.) 498, 500.

CONVEYED, (in an agreement). 27 Pa. St. 26.

CONVEYANCER—CONVEYANCING.—

§ 1. Conveyancing is that part of the lawyer's business which relates to the alienation and transmission of property and other rights from one person to another, and to the framing of legal documents intended to create, define, transfer or extinguish rights. It therefore includes the investigation of the title to land, and the preparation of agreements, wills, articles of association, private statutes operating as conveyances, and many other instruments in addition to conveyances properly so called.

§ 2. In English law, conveyancer now generally means "a barrister who chiefly devotes himself to the practice of conveyancing or combines it with equity drafting." (*See DRAFTSMAN.*) Formerly it was not unusual for a person to obtain from one of the inns of court a certificate allowing him to practice as a conveyancer below the bar, *i. e.* without being called to the bar. But this is practically obsolete. Stat. 23 and 24 Vict. c. 127, § 34; Stamp Act, 1870, § 63; Regulations of the Council of Legal Education (of the Inns of Court) 1872. See SPECIAL PLEADER.

CONVEYANCING COUNSEL.—By the Act 15 and 16 Vict. c. 80, § 41, the lord chancellor is empowered to appoint not less than six barristers, who have practiced as conveyancing counsel for ten years at least, to be conveyancing counsel of the Court of Chancery, and the opinion of any of them may be received and acted on by the court or by a judge at chambers in the investigation of the title to an estate, or in the settlement of a draft conveyance, mortgage, &c. (Dan. Ch. Pr. 1046.) By the Judicature Act, 1873, § 77, they were transferred to the Supreme Court.

CONVEYING, (in a statute). 21 Tex. 280.

CONVICIUM.—In the civil law, anything which publicly insults another; slander.

CONVICT.—Formerly a man was said to be convict when he had been found guilty of treason or felony, but before judgment had been passed on him, after which he was said to be attain (q. v.) (Co. Litt. 390b. At that time the word was no doubt pronounced convict.) The term convict, has, however, long had the popu-

lar meaning of "a man who has been sentenced to death or penal servitude for treason or felony," and this use of the word has been adopted by the English legislature. Stat. 33 and 34 Vict. c. 23, § 6.

CONVICTED OF A FELONY, (in a statute). L. R. 10 Q. B. 195.

CONVICTED OF CRIME, (in crimes act). 51 Ill. 311.

CONVICTED, (defined). 10 Tex. App. 469; 15 East 570.

— (in license law). 1 Russ. & G. (Nov. Sc.) 364.

— (in statute relative to witnesses). 1 Civ. Pro. (N. Y.) 56.

— (means prosecuted to judgment). 7 Man. & G. 481; 508.

CONVICTION.—The finding a person guilty of an offence. Convictions are either ordinary or summary.

§ 2. **Ordinary.**—An ordinary conviction takes place in a criminal prosecution by indictment, &c., and may either consist of the prisoner's confession and plea of guilty, or of the verdict of guilty found by a jury. 4 Bl. Com. 362; 4 Steph. Com. 435; Archb. Crim. Pl. 183. See JUDGMENT; SENTENCE; VERDICT.

§ 3. **Summary.**—A summary conviction is a judgment pronounced by one or more justices of the peace or other magistrates under the authority of a statute giving them criminal or penal jurisdiction, *e. g.* in cases of assaults. The conviction itself is a memorial of the proceedings under the hands and seals of the justices. Paley Sum. Conv. 157, where the distinction between a conviction and an order is discussed; Stone Just. 182; Pritch. Quar. Sess. 1055. See JURISDICTION; QUASH.

CONVICTION, (defined). 1 Wheat. (U. S.) 461; 48 Me. 123; 109 Mass. 323; 12 Am. Rep. 699; 69 N. Y. 107, 109; 10 Tex. App. 472; 1 Hale P. C. 686.

— (distinguished from "attainder"). 24 How. (N. Y.) Pr. 383; 25 N. Y. 406.

— (distinguished from "judgment"). 109 Mass. 323.

— (in a statute, includes "judgment" and "sentence"). 99 Mass. 420.

— (in bastardy act, used in the sense of "judgment"). 17 Pick. (Mass.) 380.

— (in license law). 1 Russ. & G. (Nov. Sc.) 364.

— (in state constitution). 76 N. C. 231, 233; 22 Am. Rep. 675.

— (means "judgment"). 14 Serg. & R. (Pa.) 69, 70.

— (of a crime.). 109 Mass. 325.

— (of a crime, to affect the credibility of a witness). 99 Mass. 420.

CONVICTION, (ordinary legal meaning of). 109 Mass. 323.

— (outlawry is, within a statute). 4 T. R. 521, 543.

CONVIVIVUM.—The same thing among the laity as *procuratio* with the clergy, *viz.*: when a tenant, by reason of his tenure, is bound to provide meat and drink for his lord once or oftener in the year.—*Blount*.

CONVOCAION.—In English law, an assembly of the clergy. There are two convocations—one for the province of Canterbury, the other for that of York, and each one consists of two houses, of which the archbishop and bishops form the upper house, and the lower house consists of deans, archdeacons, proctors representing the chapters, and proctors representing the parochial clergy. All deans and archdeacons are members of the convocation of their province, and each chapter sends one proctor. In the province of Canterbury the beneficial parochial clergy in each diocese elect two proctors, while in the province of York the clergy in each archdeaconry elect two proctors. Phillim. Ecc. L. 1923 *et seq.*; 4 Steph. Com. 525.

§ 2. Convocation is summoned by the archbishop of the province in pursuance of the queen's writ. 4 Steph. Com. 668.

§ 3. **Powers of.**—Formerly the benefited clergy taxed themselves in convocation, but they have not done so since 1663. (Phillim. Ecc. L. 1932.) Convocation has no power to bind the temporality, but it seems that it may, with the license or authority of the crown, make constitutions and canons binding on the spirituality, provided they are not against the law of the land, or the crown's prerogative. *Id.* 1958; 4 Steph. Com. 526.

CONVOY.—A convoy consists of one or more ships of war sent by a neutral country, in time of war, to protect and escort merchant ships belonging to that country. It was formerly a moot point, whether merchant vessels sailing with convoy were exempt from search (*q. v.*), and although the principle of that exemption was recognized at the close of the last century by most of the principal maritime powers, it was denied by Sir William Scott, in the case of "The Maria," in 1798. (Rob. 340; Man. Int. Law 439.) In 1801, however, the principle was adopted by Great Britain, with certain restrictions, in a convention with Russia. Man. Int. Law 499.

§ 2. **Warranty of convoy.**—In the law of marine insurance, warranty to sail with convoy is a stipulation in a policy of insurance on a ship, that it will sail with convoy. It implies: (1) A convoy for the whole voyage; (2) sailing orders from the

officer in command of the convoy, and (3) exertion on the part of the ship insured to keep with convoy. *Maud & P. Mer. Sh.* 381.

CONVOY, A, (ship sailing with). 2 H. Bl. 551, 552.

CO-OBLIGOR.—A joint obligor; one bound jointly with another or others in a bond or obligation.

COOLING TIME.—In criminal law, time for passion to subside and reason to interpose after provocation. If a homicide is committed after cooling time, it is murder, notwithstanding provocation; otherwise it may be manslaughter. *Whart. Hom.* 179.

CO-OPERATION.—The combined action of numbers. It is of two distinct kinds: (1) Such co-operation as takes place when several persons help each other in the same employment; (2) such co-operation as takes place when several persons help each other in different employments. These may be termed "simple co-operation" and "complex co-operation." *Mill Pol. Ec.* 142.

COOPERTIO.—The head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood.—*Cowell.*

COOPERTURA.—A thicket or covert of wood.

CO-ORDINATE—SUBORDINATE.—Terms often applied as a test to ascertain the doubtful meaning of clauses in a statute. If there be two, one of which is grammatically governed by the other, it is said to be "subordinate" to it; but if both are equally governed by some third clause, the two are called "co-ordinate."—*Wharton.*

COPARCENER—COPARCENARY.—**NORMAN-FRENCH:** *parcenier, parchonier*, one who holds something in common (*parchonier de meurtre*, an accomplice), (*Loysel Inst. Cout. gloss. s. v.*), from **LATIN**, *partio*, a share.

§ 1. In England, where lands descend on an intestacy to several persons as co-heirs, *e. g.* to several daughters, at common law, or to several sons according to the custom of gavelkind, the persons so inheriting are called "coparceners," or "tenants in coparcenary."

(*Litt. §§ 241 et seq.*) In the former case they are called in the old books "coparceners by the common law," and in the latter case "coparceners by the custom." *Id.* and § 265.

§ 2. Coparceners form one heir to their ancestor, and therefore they have one entire freehold in the land in respect of strangers so long as it remains undivided, "but betweene themselves to many purposes they have in judgment of law severall freeholds; for the one of them may infeoffe another of them of her part, and make liverie. And this coparcenarie is not severed or divided by law by the death of any of them; for if one die, her part shall descend to her issue." (*Co. Litt.* 164a.) Coparceners may also convey to one another by deed of release, in the same way as joint tenants. *Wms. Seis.* 119.

§ 3. Coparceners could always compel one another to make partition (*q. v.*) (*Litt. § 241; Co. Litt.* 164b; *Wats. Comp. Eq.* 458.) On a partition by agreement, the part allotted to each coparcener in severalty descends in the same way as the undivided share to which he was entitled previously to partition; in other words, the partition does not make the coparceners purchasers of their several shares within the meaning of the Inheritance Act (*q. v.*) *Wms. Seis.* 72. *See* DESCENT; ENITIA PARS; ESTATE; JOINT TENANCY; PARTITION; SEVERALTY; TENANCY IN COMMON.

COPARTICEPS.—A coparcener (*q. v.*)

COPARTNER—COPARTNERSHIP.—*See* PARTNERSHIP.

COPARTNERY.—In Scotch law, a contract of copartnership.—*Bell Dict.*

COPE.—A custom or tribute due to the crown or lord of the soil, out of the lead mines in Derbyshire; also a hill, or the roof and covering of a house; a church vestment.—*Blount; Cowell.*

COPEMAN, or COPESMAN.—A chapman (*q. v.*)

COPESMATE.—A merchant, a partner in merchandise.

COPIA LIBELLI DELIBERANDA.—A writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him.—*Reg. Orig.* 51.

COPPA.—A crop or cock of grass, hay, or corn, divided into tithable portions, that it may be more fairly and justly tithed.—*Wharton*.

COPPER AND OTHER METALS, (when does not include gold or silver). *Wilberf. Stat. L.* 184.

COPPER COIN, (in a complaint for larceny). 16 *Gray (Mass.)* 241.

COPPERED SHIP, (insurance on). 8 *Pet. (U. S.)* 557, 578.

COPPICE, or COPSE.—A small wood, consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel.

COPPICE WOOD, (defined). 6 *Mod.* 23.

Copulatio verborum indicat acceptationem in eodem sensu (4 *Bac.* 26): The coupling of words shows their acceptation in the same sense. See *NOSCITUR A SOCIIS*.

COPY.—

§ 1. A copy is a document which is taken or written from another, as opposed to an original. The principal sorts of copies used for the proof of documents are: (1) Exemplifications of a record under the seal of the court where the record is; (2) office copies, or copies made by an officer appointed for that purpose and sealed with the seal of the office; (3) examined copies, or copies sworn to be true copies by persons who have compared them with the original, either by one person comparing the copy line for line with the original, or by reading the copy while another person reads the original; (4) copies signed and certified as true by the officer to whose custody the original is entrusted (see *CERTIFIED COPY*); (5) photograph copies. (*Best Ev.* 619.) To these may be added (6) attested copies, as to which see *ATTEST*, § 2.

§ 2. As to the rules governing the admissibility of copies in evidence, see *EVIDENCE*.

§ 3. As to tenancy by copy of court roll, or tenancy by copy, as it is called in the old books, see *COPYHOLD*.

§ 4. Copy in the old writers also signifies "copyright" (*q. v.*) (*Millar v. Taylor*, 4 *Burr* 2311, 2396.) The "right of copy" is the right to reproduce, from Latin *copia*, abundance. *Littre Dict. s. v. Copie*.

COPY, (defined). *South. (N. J.)* 71.

— (in certificate of prothonotary). 13 *Serg. & R. (Pa.)* 135, 334.

— (in copyright law). 2 *Wall. Jr. (U. S.)* 547.

— (how proved). 3 *Day (Conn.)* 499.

— (of book, distinguished from "translation"). 2 *Wall. Jr. (U. S.)* 547.

COPY, (of papers served, in pleading). 2 *Hill (N. Y.)* 413.

COPY OF A COPY, (how far evidence). 9 *Pet. (U. S.)* 676, 677.

COPY OF A PRINT, (in copyright act). 4 *Wash. (U. S.)* 48.

COPY OF AN INDICTMENT, (in United States statute). 2 *Dall. (U. S.)* 335.

COPYHOLD—COPYHOLDER.—

§ 1. Copyholds, or lands held by copyhold tenure, are lands forming part of a manor, originally granted by the lord for tenancies at will merely, which, however, have by immemorial custom become converted into estates independent of the will of the lord in everything but name, and of various degrees of duration, according to the custom of the particular manor. Copyholds are so called, because the evidence of the title to such lands consists of copies of the court roll of the manor, a book in which all dealings with the land are entered. "Tenant by copy of court roll is, as if a man be seised of a manor, within which manor there is a custome which hath been used time out of minde of man, that certaine tenants within the same manor have used to have lands and tenements, to hold to them and their heires in fee simple, or fee taile, or for terme of life, &c., at the will of the lord according to the custome of the same manor." (*Litt. § 73*.) "And forasmuch as the title or estate of the copyholder is entred into the roll whereof the steward delivereth him a copie, thereof he is called copiholder." *Co. Litt.* 58a. See *ROLL*.

§ 2. All copyhold land is therefore subject to two estates, namely, that of the lord, which is a freehold estate, and that of the tenant, which is a customary estate. (See *ESTATE; TENURE*.) Except that it gives rise to certain fines (*q. v.*) and other dues, the estate of the lord is almost purely nominal. See *INTEREST*.

§ 3. The following consequences follow from the estate of the copyholder having been originally an estate at will only, and from the freehold being vested in the lord: (1) That the minerals under, and the timber on the land, belong to the lord, so that the tenant cannot take them without a license from the lord, while the lord cannot take them without the consent of the tenant, unless there is a custom enabling him to do so, (and when he does take them the resulting space belongs to the copyholder, *Eardley v. Granville*, 3 *Ch. D.* 826;) (2) that all alienations of the tenant's interest in the land must be effected by the intervention of the lord, (see *ADMITTANCE; GRANT; SURRENDER*), to whom a fine is generally payable (see *FINE*); and (3) that a copyholder cannot lease his land for a longer period than one year, without a license from the lord, unless there is a special custom enabling him to do so.

§ 4. Subject to these restrictions, the ownership of a copyholder is practically as absolute as that of a freeholder. It is true, that he holds his land nominally at the will of the lord, but he also holds it according to the custom of the manor, which overrides the will of the lord, (*Co. Litt.* 60b; *Co. Copyh.*;) if the tenant alienates or devises the land, or dies intestate, the lord is

bound to admit the alienee, devisee, or heir as tenant, and if he refuses, he can be compelled by *mandamus* to do so. (Wms. Seis. 48.) Copyholds are liable for the debts of the deceased copyholder if he had an estate beyond his own life. (Stat. 3 and 4 Will. IV. c. 104.) They are also liable to be taken in execution for his judgment debts, under a writ of *elegit*, (Stat. 1 and 2 Vict. c. 110, § 11,) and pass on his bankruptcy to his trustee, for the benefit of his creditors. Bankruptcy Act, 1869, §§ 22, 25.

§ 5. The custom of each manor determines the maximum degree of property which the copyholders may have in their customary tenements. Hence copyholds are generally divided into (1) Copyholds of inheritance, which are alienable for an estate of inheritance, or any less estate, but not for an estate-tail, unless there is a custom to entail in the manor. If there is no such custom, then a gift to a man, and the heirs of his body, will give him a customary estate of fee-simple, conditional at the common law. (See *FEE*; *TAIL*.) (2) Copyholds for lives, which are alienable for one or more lives in a great variety of manners, but for no greater estate. When a copyholder for lives has a tenant right of renewal or of appointing his successor, his estate is almost the same as a customary fee, and he is hence called a "quasi-copyholder in fee." (3) Copyholders for years, which are alienable for terms of years, renewable or not, according to the custom, but for no greater estate. *Elt. Copyh.* 44 *et seq.* See, generally, as to estates in copyholds, title, *ESTATE*; *also*, *FREEBENCH*; *GRANT*. As to the rights of the lord to heriots, rents, reliefs, forfeitures, &c., see those titles; *also*, *COMMUTATION*. As to the enfranchisement of copyholds, see that title; *also*, *ANCIENT DEMESNE*; *CUSTOMARY FREEHOLDS*; *DEMESNE*; *SEIZURE*; *TENANT BY THE VERGE*; *VILLENAGE*.

COPYHOLD COMMISSIONERS.—Commissioners appointed to carry into effect various acts of parliament, having for their principal objects the compulsory commutation of manorial burdens and restrictions, (fines, heriots, rights to timber and minerals, &c.,) and the compulsory enfranchisement of copyhold lands. 1 Steph. Com. 643; *Elt. Copyh.* See *COMMUTATION*; *ENFRANCHISEMENT*.

COPYRIGHT.—

§ 1. In the proper sense of the word, "copyright" is the exclusive right of printing or otherwise multiplying copies of a published literary work, *i. e.* the right of preventing all others from doing so. (Per Parke, B., in *Jeffreys v. Boosey*, 4 H. L. C. at p. 920; *Curt. Copyr.*; *Lownd. Copyr.* Compare the French Statute of 19 July, 1793, (Teulet, Codes, supp. 184,) and the German Copyright Act of 11th June, 1870.) The infringement of this right is called "piracy" (*q. v.*)

§ 2. The right to prevent others from multiplying copies of a published work

(such as a book, painting, engraving, photograph, &c.,) is a statutory one, depending on the provisions of various statutes from 8 Anne c. 19 down to the present time. (Shortt Copyr. 65 *et seq.* As to the copyright in an engraving from a picture, see *Dicks v. Brooks*, 15 Ch. D. 22.) They vest the copyright of the work in the author and his assigns, limit the time during which the copyright exists, and prescribe certain formalities, the principal of which are registration, and (in the case of a book) the deposit and delivery of copies of it to certain public libraries; in America, the library of congress. (Stat. 5 and 6 Vict. c. 45, §§ 6, 11; Shortt Copyr. 86 *et seq.*; Wats. Comp. Eq. 122; U. S. Rev. Stat., § 4948.) The term of copyright in the case of a book, pamphlet, sheet of music, map, &c., is, in America, twenty-eight years, with a privilege of renewal for fourteen years; in England either the life of the author and seven years more, or the period of forty-two years from the first publication of the book, whichever period is longer. (5 and 6 Vict. c. 45, § 3.) In the case of articles in encyclopædias, periodicals, &c., the copyright of each article belongs to the author, unless he and the publisher otherwise agree, and even then it only belongs to the publisher for twenty-eight years, after which time the right of publishing it in a separate form reverts to the author for the remainder of the term of forty-two years. (Stat. 5 and 6 Vict. c. 45, § 18.) Where a book is published in parts (as in the case of an encyclopædia or periodical), it is only necessary to register the title and time of the first publication of the first number. (Stat. 5 and 6 Vict. c. 45, § 19.) Independently of copyright, however, the publication of a periodical which imitates in form, title, &c., one which has previously been published, may be restrained by injunction, on the principle of trade-mark or trade-name (*q. v.*) (See *Hogg v. Maxwell*, 2 L. R. Ch. 318; *Bradbury v. Beeton*, 39 L. J. Ch. 57; *Weldon v. Dicks*, 10 Ch. D. 247.) In the case of engravings, prints and lithographs, the term is twenty-eight years from publication, whether the engraving is original or taken from a picture. (Stat. 8 Geo. II. c. 13; 7 Geo. III. c. 38; 17 *Id.* c. 57; Shortt Copyr. 106. See *Dicks v. Brooks*, 15 Ch. D.

22.) The right of copying, engraving, reproducing and multiplying every original painting, drawing and photograph, is reserved to the author and his assigns, in England, for the term of his natural life and seven years after his death. Stat. 25 and 26 Vict. c. 68.

§ 3. The right of representation and performance (*q. v.*) is sometimes called "dramatic copyright." *Chatterton v. Cave*, 3 App. Cas. 483.

§ 4. **Copyright in designs, sculpture, &c.**—The term copyright is also used to denote the exclusive right of applying ornamental or useful designs to articles of manufacture, &c., and to the right of multiplying copies or casts of sculpture and models.

§ 5. **International copyright.**—International copyright is the right of a subject of one country to protection against the republication in another country of a work which he originally published in his own country. The right of foreigners to protection, in England, against the republication there of works (books, prints, sculptures, &c.) originally published abroad, can only exist by virtue of an order in council applying to the particular country, and such an order can only be made when by the law of that country reciprocal protection is given to British subjects. (7 and 8 Vict. c. 12; *Shortt Copyr.* 130; *Fairlie v. Boosey*, 4 App. Cas. 711; *Klostermann Geist. Eig.*; *Eisenlohr, Verträge, passim.*) The subject of international copyright has been for some time under discussion in the United States, but no definite result has yet been attained.

§ 6. **Authorized translations.**—Similar protection may be given against the publication in this country of unauthorized translations (*i. e.* translations not sanctioned by the author) of books published abroad, provided the original work is registered here and an authorized translation published within a certain time from the publication of the original work.

§ 7. Copyright is a species of incorporeal personal property; it may be assigned by a written instrument or by an entry in the register. *Shortt Copyr.* 152.

§ 8. Copyright is also said to mean the right which the author of an unpublished

literary composition has at common law to the piece of paper on which it is written and to the copies of it which he chooses to make. If he lends or entrusts a copy to another, that person cannot multiply copies of it, or publish it, or make any other use of it, except with the consent of the author. (*Jeffreys v. Boosey*, 4 H. L. C. p. 919; *Shortt Copyr.* 48; *Prince Albert v. Strange*, 2 De G. & S. 693.) This, however, does not seem to be an accurate use of the term copyright, nor is it common. See **RIGHT OF REPRESENTATION AND PERFORMANCE.**

§ 9. **By prerogative.**—In England, the crown has the exclusive right of publishing certain books, of which the most important are the English translation of the Bible, the statutes, and reports of judicial proceedings. The privilege of publishing the Bible and some other books has been granted to the Universities of Oxford and Cambridge. The crown's copyright is not now strictly enforced. *Shortt Copyr.* 36.

CORAAGE, or CORAAGIUM.—An extraordinary imposition, upon some unusual occasion; it seems to be of certain measures of corn.—*Blount.*

CORAM.—Before; in presence of; used in such phrases as the following:

CORAM IPSO REGE.—Before the king himself. The old name of the Court of King's Bench, which was originally held before the king in person. 3 Bl. Com. 41.

CORAM NOBIS.—Before us ourselves (the king, *i. e.* in the King's or Queen's Bench). Applied to writs of error directed to another branch of the same court, *e. g.* from the full bench to the court at *Nisi Prius*.

CORAM NON JUDICE.—Before one who is not the judge. An expression used where a court proceeds in a matter beyond its jurisdiction. The term was generally used in reference to proceedings before justices of the peace, the general rule being that if the want of jurisdiction appeared on the face of the proceedings they were void, and no act done in pursuance of them could be justified; but this rule has been modified in England by the act 11 and 12 Vict. c. 44, for the protection of justices of the peace from vexatious actions for acts done by them in the execution of their office, section two of which requires the conviction or order to be

quashed before an action can be brought. *Crepps v. Durden*, 1 Sm. Lead. Cas. 716.

CORAM PARIBUS.—Before his peers. Deeds were anciently attested only *coram paribus*. 2 Bl. Com. 307.

CORAM VOBIS.—Before you. A writ of error to review the proceedings of an inferior court which tried the case, to correct an error in fact.

CORD.—A quantity of wood piled closely, eight feet long, four feet broad, and four feet high.

CORD, (of wood, dimensions of). 67 Barb. (N. Y.) 169.

CORDS, (of wood, in statute of weights and measures). 2 Allen (Mass.) 319.

CO-RESPONDENT.—In England, where a husband brings a suit against his wife charging her with adultery, the alleged adulterer must as a rule be made a party to the petition as a co-respondent. If the adultery is proved the court may order him to pay damages to the husband. Browne Div. 143, 204; 20 and 21 Vict. c. 85, §§ 28, 33. See ADULTERY; DISSOLUTION OF MARRIAGE.

CORIUM FORISFACERE.—To forfeit one's skin; applied to a person condemned to be whipped; the ancient punishment of a servant.

CORN.—A comprehensive term in English law including all kinds of grain; in this country, however, its meaning seems to be limited to maize. In the memorandum clause in policies of insurance it includes peas and beans, but not rice. Park Ins. 112.

CORN, (in a statute). 53 Ala. 474; 2 Pa. L. J. Rep. 411.

CORN LAWS.—Laws regulating the trade in grain and breadstuffs.

CORN RENT.—A rent in wheat or malt paid on college leases by direction of Stat. 18 Eliz. c. 6. 2 Bl. Com. 609.

CORNAGE.—A tenure by which land might formerly be held. "It is said that in the marches of Scotland some hold of the king by cornage, that is to say, to winde a horne, to give men of the countrie warning, when they heare that the Scots or other enemies are come or will enter into England; which service is grand serjeanty. But if any tenant hold of any other lord than of the king by such service of cornage, this is not grand serjeanty, but it is knight's service, . . . for none may hold by grand serjeanty but of the king only." (Litt. § 156.) Cornage was abolished by the Act 12 Car. II. c. 24, cer-

tainly so far as it constituted knight's service, and apparently also in the case of grand serjeanty, because the service of cornage could hardly be called an honorary service, which is the only kind of service excepted from the act. (From old French, *corn*, *corne*, a horn.) See GRAND SERJEANTY; TENURE.

CORNER.—(1) A combination of capitalists for the purpose of holding or controlling the great bulk of any one commodity which is on the market, or may be brought upon the market, in order to advance the price unnaturally and unreasonably. (2) An angle made by two boundary lines at their point of intersection.

CORNER, (in stock). 101 Mass. 145.

— (of survey). 2 Wheel. Am. C. L. 484.

CORNET.—A commissioned officer (generally the standard bearer) of a cavalry company. There is no such officer in the regular army of the United States.

CORNWALL.—The eldest son of the reigning sovereign of England is by inheritance Duke of Cornwall during the life of the sovereign. (1 Bl. Com. 224; The Prince's Case, 8 Co. 1.) The principal statutes relating to the duchy lands are: 7 and 8 Vict. c. 65; 25 and 26 Vict. c. 49; 26 and 27 Vict. c. 49, and 31 and 32 Vict. c. 35. Stat. 21 and 22 Vict. c. 109 relates to mines; and 9 Geo. III. c. 16; 7 and 8 Vict. c. 105; 23 and 24 Vict. c. 53, and 24 and 25 Vict. c. 62, to the limitation of suits in relation to lands within the duchy. 2 Steph. Com. 451, n. See, also, STANNARIES; TINBOUNDING.

CORODIO HABENDO.—A writ to exact a corody of an abbey or religious house.—*Reg. Orig.* 264.

CORODY.—A sum of money or allowance of a house, chamber, meat, drink, clothing or other necessities paid or allowed by an abbey or other house of religion to a servant of the crown at the king's request; but the king was only entitled to demand corodies of such abbeyes, &c., as he was founder of by right of his crown. (See IN CAPITE. F. N. B. 230; Co. Litt. 49a; Finch Law 162; *Cowell s. v.*) Corodies also seem to have been created by grants from one person to another, like annuities (*Termes de la Ley s. v.*); but they are now all obsolete. See HEREDITAMENT.

COROLLARY.—A collateral consequence, deduction, or inference.

CORONA MALA.—The clergy who abused their character were so called.—*Blount*.

CORONARE FILIUM.—To make one's son a priest. *Homo coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a *corona*, or crown of thorns.—*Cowell*.

CORONATION OATH.—The oath administered to a sovereign at the ceremony of crowning or investing him with the insignia of royalty, in acknowledgment of his right to govern the kingdom, in which he swears to observe the laws, customs and privileges of the kingdom, and to act and do all things conformably thereto.—*Wharton*.

CORONATOR.—A coroner (*q. v.*)—*Spel. Gloss.*

CORONATORE ELIGENDO.—A writ issued to the sheriff, commanding him to proceed to the election of a coroner.

CORONATORE EXONERANDO.—A writ for the removal of a coroner for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it. The 25 Geo. II. c. 29, makes extortion, neglect, or misbehavior causes of removal; and see 23 and 24 Vict. c. 116.

CORONER.—**NORMAN-FRENCH:** *corouner*, from *coroune*, the crown, apparently because the coroner was the chief representative of the crown in criminal and other business. *Britt.* 3b.

A county officer having both judicial and ministerial duties, the former including the duty of inquiring as to the manner of death of any person who is slain or dies suddenly, or in prison. The inquest is held before a jury, *super visum corporis* (after viewing the dead body). In England, if the jury return a verdict of murder or manslaughter against any person by name, the inquisition is equivalent to an indictment (*q. v.*) and it is the duty of the coroner to commit the accused for trial, unless (in case of manslaughter) he thinks fit to admit him to bail; but in America, he cannot thus usurp the functions of the grand jury. He may also bind over any witnesses to appear at the trial. In England, another branch of the coroner's office is to inquire concerning shipwrecks, though this seems to have been practically abolished by modern legislation (see **WRECK**) and treasure trove. The coroner is also a conservator of the king's peace and a magistrate, by virtue of his appointment. His ministerial office is only as the sheriff's substitute in executing process where the sheriff is disqualified or suspected of partiality. *Jervis Cor. passim*; 2 Steph. Com. 637 *et seq.*; *Pritch. Quar. Sess.* 62; *Lee's Handb. Cor.*

§ 2. In England, there are coroners (usually four in number) for every county in England,

some counties being divided into districts for the purpose. They are elected by the freeholders. (Stats. 7 and 8 Vict. c. 92; 23 and 24 Vict. c. 116.) There is also a coroner in every borough having a separate court of quarter session. He is appointed by the council of the borough, (Steph. 636; Stat. 5 and 6 Will. IV. c. 76, § 62,) and some franchises or liberties (such as lordships, universities, and the like) have their own coroners, being either persons acting as coroners *ex officio* (such as heads of corporations), or persons appointed by them; the right of acting as or appointing coroners in such places, being derived from the crown, they are sometimes called "coroners by charter." The city of London, the Cinque Ports, and the Stannaries have coroners of this description. To the same class belong the coroners of the verge (see **VERGE**), and the coroners of the admiralty, who have jurisdiction in matters arising on the high seas, or on creeks and public rivers, their jurisdiction in the latter cases being concurrent with that of the coroner of the county. The judge of the Admiralty Division is coroner by patent: he appoints deputies or substitutes for particular districts.

§ 3. **Official coroners** are the lord chief justice of England, who, by virtue of his office, is supreme coroner over all England, and the judges of the High Court of Justice, who are also sovereign coroners. *Jervis Cor.* 2, 49.

CORONER'S COURT.—A tribunal of record, where a coroner holds his inquiries.

CORPORAL.—An epithet for anything that belongs to the body, as corporal punishment.

CORPORAL OATH.—Anciently so called because the party taking it is obliged to lay his hand on the New Testament.—*Cowell*. In modern law, any solemn form of oath, even one taken with the uplifted hand. 1 Ind. 184.

CORPORAL OATH, (defined). 9 N. H. 96, 101.

— (in indictment for perjury). 7 Wheel. Am. C. L. 311.

— (synonymous with "solemn oath"). 1 Ind. 184.

— (what is taking a). 3 Yeates (Pa.) 407, 412.

CORPORAL PUNISHMENT, (defined). 7 Cow. (N. Y.) 525, n.

Corporalis injuria non recipit æstimationem de futuro (Bac. Max. 34): A personal injury does not receive satisfaction from a future course of proceeding. See 3 How. St. Tr. 71.

CORPORATE.—(1) Incorporated, *e. g.* a corporate body. (2) Appertaining or belonging to a corporation, *e. g.* a corporate name (*q. v.*)

CORPORATE AUTHORITY, (in a statute). 1 South. (N. J.) 346.

— (of a city or borough). 1 South. (N. J.) 346.

CORPORATE AUTHORITIES, (in State constitution). 51 Ill. 17; 53 *Id.* 105; 57 *Id.* 144.

CORPORATE EXISTENCE, (in a statute). 55 Mo. 310.

CORPORATE LOCAL AUTHORITIES, (having power to tax). 57 Ill. 144.

CORPORATE NAME.—When a corporation is erected, a name is always given to it, or, supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. But some name is the very being of its constitution, and though it is the will of the sovereign that erects the corporation, yet the name is the knot of its combination, without which it could not perform its corporate functions. "The name of incorporation," says Coke (10 Rep. 28), "is as a proper name, or name of baptism, and therefore when a private founder gives his college or hospital a name, he does it only as a godfather, and by the same name the king baptizes it on incorporation."

CORPORATE PURPOSES, (in tax act). 42 Ill. 9; 64 *Id.* 427.

CORPORATE PROPERTY, (of a town). 114 Mass. 555.

CORPORATE RIGHTS, (defined). 23 Wend. (N. Y.) 103, 154.

CORPORATION.—A succession or collection of persons having in the estimation of the law an existence and rights and duties distinct from those of the individual persons who form it from time to time. (Sutton's Hospital Case, 10 Co. 32b; Reg. v. Arnaud, 9 Ad. & E. n. s. 806; Co. Litt. 250a; 1 Lind. Part. 213; Grant Corp., *passim*; Sm. Merc. L. 104; 1 Bl. Com. 468; 3 Steph. Com. 2; Poll. Cont. 83; Shelf. R. P. Stat. 133.) Corporations are of three kinds.

§ 2. **Sole.**—A corporation sole consists of only one member at a time, the corporate character being kept up by a succession of solitary members. Corporations sole are always holders of a public office,

the principal examples being the sovereign and ecclesiastical persons, such as bishops, parsons, &c. The principal incident of such a corporation is that the property which the member holds by virtue of his office (but not his private property) passes on his death not to his real or personal representatives, but to his successor in office, as if he and the successor were the same person. It is only in a few instances that chattels go in succession in the case of a corporation sole. Grant Corp. 629.

§ 3. **Aggregate.**—A corporation aggregate consists of several members at the same time. The most frequent examples are incorporated companies and municipal corporations. (See COMPANY; MUNICIPAL CORPORATION.) The chief peculiarity of a corporation aggregate is that it has perpetual succession (*i. e.* existence), a name, and a common seal by which its intention may be evidenced; that, being merely a creation of the law, it cannot (at common law) commit a crime or enter into a personal contract or relation (see PERSONAL); and that the majority of the members have power to bind the minority in matters within the powers of the corporation. Poll. Cont. 84; Grant Corp. 5; 1 Bl. Com. 478.

§ 4. There are also in England certain corporations which are partly sole and partly aggregate, namely, those in which the property and rights of the corporation are vested in one member as the head or representative of the others, as in the case (before the reformation) of an abbot and his convent, or (at the present day) the master of a hospital, who holds the property for the benefit of the poor brethren. These corporations are sometimes spoken of as "corporations aggregate of which the head only is capable" (*i. e.* capable of taking land in succession), (Co. Litt. 94a, b,) and sometimes as "corporations sole *in autre droit*." Litt. §§ 443, 645, 653 *et seq.*; Co. Litt. 103a, 325b, 338b, 341b; 2 Bl. Com. 431

§ 5. **Other classes.**—Corporations are further divisible into *ecclesiastical* (*spiritual*), such as bishops, deans and chapters, &c., or *lay*. Lay corporations again are either *civil*—such as the sovereign, municipal corporations, and trading companies; or *eleemosynary*—such as colleges, hospitals, and other charitable corporations. (1 Bl. Com. 470; Phillim. Ecc. L. 1982; Brice U. V. 13.) They are also divisible into *public*, such as are exclusively instruments of the public interest, and *private*, such as are

devoted either wholly or in part for purposes of private emolument.

§ 6. **Quasi-corporations.**—There are some aggregate bodies which are not complete corporations, and are therefore sometimes called "quasi-corporations;" such are church wardens, who cannot hold land in succession, and have not a common seal. Grant Corp. 600.

§ 7. With reference to the mode of their creation, corporations exist according to the common law or under a statute. The first class includes many corporations *virtute officii*—such as the crown, bishops, parsons, &c.; and corporations existing by prescription (*q. v.*), by charter (*q. v.*), and by implication. An example of the last kind is where the crown grants land to "the men of Islington" at a certain rent; this incorporates them, for otherwise the grant could not be fully carried into effect. (Grant Corp. 8; 1 Bl. Com. 472.) Corporations created by statute may be divided into those incorporated by special act and those created under a general act. See DISSOLUTION; SEAL; ULTRA VIRES; VISITATION.

CORPORATION, (defined). 4 Wheat. (U. S.) 636, 637, 657; 58 Ala. 54; 37 Cal. 543; 18 Kan. 253; 2 Mass. 501; 12 Id. 553; 1 Hill (N. Y.) 616; 1 Johns. (N. Y.) Cas. 319, 326; 19 N. Y. 37, 39; 22 Wend. (N. Y.) 70; 23 Id. 103, 142, 175; 9 Heisk. (Tenn.) 511; 3 Wheel. Am. C. L. 440; 1 Bl. Com. 467.

— (altering charter without consent). 1 Abb. (U. S.) 22; 4 Wheat. (U. S.) 518.
— (board of health of city of New York is not). 10 N. Y. 409.

— (commissioners to organize educational institution are not). 9 Gill (Md.) 379.

— (county board of supervisors are not). 20 Barb. (N. Y.) 294; 2 Sandf. (N. Y.) 460.

— (county is, people of county are not). 15 Cal. 33.

— (general assembly of Presbyterian church is not). 4 Whart. (Pa.) 531.

— (government as a member of). 2 Pet. (U. S.) 323.

— (how proved). 2 N. H. 310, 312.

— (in a suit, must prove their corporate existence). 8 Johns. (N. Y.) 295.

— (in acts of congress, a State is not). 35 Ga. 315.

— (in practice act). 54 Ind. 501.

— (in U. S. internal revenue law, does not include a State). 1 Abb. (U. S.) 22.

— (joint stock company treated as). 10 Wall. (U. S.) 566; 100 Mass. 531.

— (overseers of the poor are). 18 Johns. (N. Y.) 407.

— (powers of). 2 Mass. 269; 2 Cow. (N. Y.) 678, 709.

CORPORATION, (proprietors of townships are). 11 N. H. 44.

— (public and private, distinguished). 3 Wheel. Am. C. L. 489.

— (school district is). 33 Conn. 298, 304; 26 Ind. 310; 37 Iowa 542; 22 Me. 564.

— (sole and aggregate, distinguished). 22 Pick. (Mass.) 122, 126.

— (State treated as). 10 Sm. & M. (Miss.) 529; 6 Hill (N. Y.) 33; 2 Johns. (N. Y.) Cas. 417.

— (to appoint agents without seal). 2 Kent Com. (11 edit.) 345.

— (town is). 2 Wend. (N. Y.) 109; 13 Id. 325.

— (town supervisor is). 1 Cow. (N. Y.) 670.

— (towns and cities as). 109 Mass. 213.

— (trustees of school district are not). 23 Mo. 418.

— (water commissioners of New York city are not). 2 Hill (N. Y.) 432.

CORPORATION ACT.—The Act 13 Car. II. c. 1, § 2, by which it was provided that no person should thereafter be elected to office in any corporate town, who should not within one year previously have taken the sacrament of the Lord's supper according to the rites of the Church of England. 4 Bl. Com. 58.

CORPORATION AGGREGATE, (defined). 4 Wheat. (U. S.) 518, 561; 1 Hill (N. Y.) 616, 620; 7 Id. 504; 15 How. (N. Y.) 172; 22 Wend. (N. Y.) 9, 70.

CORPORATION, FOREIGN, (how proved). 9 Cow. (N. Y.) 194, 205; 15 Wend. (N. Y.) 314, 315.

— (when may sue in courts of domicile). 7 Mart. (La.) 31; 4 Johns. (N. Y.) Ch. 370, 372; 1 Str. 612.

CORPORATION, PRIVATE, (what is). Minor (Ala.) 23; 2 Stew. (Ala.) 30; 3 Ga. 233.

CORPORATION, PUBLIC, (defined). 9 Gill & J. (Md.) 365; 3 Harr. (N. J.) 200; 2 Dutch. (N. J.) 148.

— (county is). 1 Swan (Tenn.) 236.

— (trustees of the poor are). Walk. (Miss.) 328.

CORPORATION, PUBLIC AND PRIVATE, (defined). 1 Wall. Jr. (U. S.) 275; 4 Wheat. (U. S.) 518, 562.

CORPORATION PURPOSE, (in state constitution). 3 Head (Tenn.) 317.

CORPORATION, QUASI, (defined). 1 Me. 361, 363; 2 Pick. (Mass.) 352; 7 Mass. 169, 187; 13 Id. 198.

— (boards of health are). 18 Barb. (N. Y.) 567.

— (county is). 11 Minn. 31, 41; 36 Mo. 294, 303, 555; 1 Sneed (Tenn.) 637, 687.

CORPORATION, SOLE, (defined). 7 Abb. (N. Y.) Pr. 134.

— (individual banker is). 16 How. (N. Y.) Pr. 97; 19 N. Y. 37.

CORPORATOR.—A member of a corporation aggregate. Grant Corp. 48; Russell v. Wakefield W. Co., L. R. 20 Eq. at p. 479.

CORPORE ET ANIMO.—*See* ANIMO ET CORPORE.

CORPOREAL HEREDITAMENT.—*See* HEREDITAMENT.

CORPOREAL PROPERTY.—Tangible property, as distinguished from "incorporeal property," which consists of choses in action, easements, &c.—*Mozley & W.*

CORPS DIPLOMATIQUE.—The body of ambassadors and diplomatic persons.—*Wharton.*

CORPSE.—The dead body of a human being. Taking up a corpse for the purpose of dissection, or otherwise, is a misdemeanor at common law, punishable by fine or imprisonment; but stealing a corpse before burial is not a common law offence. (3 Inst. 203.) Refusing to bury dead bodies by those whose duty it is to do so, is punishable by the temporal courts, independently of spiritual censures, on indictment or information. A jailer cannot detain the dead body of a person in his custody under a *ca. sa.* until the executors of the deceased person satisfy his pecuniary claims upon the deceased. *R. v. Fox*, 2 Q. B. 246. *See, also, Jones v. Ashburnham*, 4 East 455.

CORPUS.—A body. The word is used not only of the human body, but also in speaking of corporations, collections of laws, and the substance or whole of any material thing.

CORPUS CHRISTI DAY.—A feast instituted in 1264, in honor of the sacrament. 32 Hen. VIII. c. 21.

CORPUS COMITATUS.—The body of a county. The whole county, as distinguished from a part of it, or any particular place in it. 5 Mas. (U. S.) 290.

CORPUS CORPORATUM.—A corporate body, or corporation. *Burr. Sett. Cas.* 143.

CORPUS CUM CAUSA.—A writ issuing out of Chancery to remove both the body and record touching the cause of any man lying in prison.—*F. N. B.* c. 21.

CORPUS DELICTI.—Literally, the body of the offence or crime, *i. e.* the substantial fact that a crime has been committed by some one; *e. g.* in the case of a

dead body, that it has come to a criminal death (which can only be proved in the presence of the dead body, *super visum corporis*). This inquiry is usually made before the coroner of the county or county district, or of the borough, in which the death occurred. In a secondary but slightly abusive sense, the *corpus delicti* is used to denote the dead body itself. Until the fact of a criminal death is made out, it is, of course, fruitless to inquire who was the criminal.

Corpus humanum non recipit æstimationem (Hob. 59): A human body is not susceptible of appraisement.

CORPUS JURIS CANONICI.—*See* CANON LAW.

CORPUS JURIS CIVILIS.—The body of Roman law contained in the institutes, digest and code compiled by the orders of Justinian, together with the *novellæ*, or constitutions promulgated after the compilation of the code. *See* the various titles.

CORPUS PRO CORPORE.—Body for body. *See* 3 How. St. Tr. 110.

CORRECT, (in an agreement to submit accounts to arbitration). 65 Me. 143.

CORRECTED, THERE TO BE, (in a statute). 14 East 605, 608.

CORRECTION, MODERATE, (by master of a vessel). 15 Mass. 368.

CORRECTOR OF THE STAPLE.—A clerk belonging to the staple, to write and record the bargains of merchants there made. 27 Edw. III. cc. 22, 23.

CORREDIUM.—*See* CORODY.

CORREGIDOR.—A Spanish magistrate.

CORREI.—A civil law term for two or more persons jointly secured or bound by the same obligation: thus, *correi credendi*, joint creditors; *correi debendi*, joint debtors.

CORRELATIVE.—Terms which have a mutual reciprocal relation, such as "father" and "son," "prince" and "subject," "duty" and "right," are correlative terms.

CORROBORATING CIRCUMSTANCES, (in reference to a confession). 5 Halst. (N. J.) 163, 192.

CORROBORATIVE.—*See* EVIDENCE.

CORRODIUM.—A corody (*q. v.*)

CORRUPT.—*See* BRIBERY.

CORRUPT OR PROCURE, (in a statute). 3 Ad. & E. 51, 55.

Corruptio optimi est pessima: Corruption of the best is worst.

CORRUPTION OF BLOOD.—See **ATTAINDER**.

CORRUPTLY AND VOLUNTARILY, (in an indictment for perjury). 1 Cro. 147, 201.

CORRUPTLY AND WILFULLY, (in an indictment for perjury). 5 Barn. & C. 246, 249; 7 Dowl. & Ry. 665, 671.

CORSELET.—A little body. Ancient armour which covered the body.

CORSEPRESENT.—A mortuary, thus termed, because when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corsepresent was due upon the death of a clergyman to the bishop of the diocese, till abolished by 12 Anne, st. 2, c. 6. 2 Bl. Com. 426.

CORSNED BREAD.—**SAXON**: *corsian*, to curse, and *snæd*, a morsel; **LATIN**: *panis conjuratus*, or *offa execrata*, the morsel of execration, or ordeal bread.

A kind of superstitious trial or ordeal used among the Saxons, to purge themselves of any accusation, by taking a piece of barley bread and eating it with solemn oaths, curses, and execrations, that it might prove poison, or their last morsel, if what they asserted, or denied, were not true. 4 Bl. Com. 345, 414.

CORTES.—The assembly of the States of Spain or Portugal, answering in some measure to the parliament of Great Britain.

CORTEX.—The bark of a tree; the outer covering of anything.

CORTIS.—A court or yard before a house.—*Blount*.

CORTULARIUM, or CORTARIUM.—A yard adjoining to a country farm.

CORVEE.—A feudal service, as to repair roads, &c.

COSCEZ.—See **COTARIUS**.

COSDUNA.—In feudal law, a custom or tribute.

COSENING.—An offence where anything is done deceitfully, whether belonging to contracts or not, which cannot be properly termed by any special name.—*Jacob*.

COSHERING.—A feudal custom, whereby the lords may lie and feast themselves and their followers at their tenants' houses, &c.—*Cowell*.

COSINAGE.—This word, in the old books, signifies "consanguinity." A writ of cosinage

was a real action which lay for the recovery of lands, &c., of which the heir's great-grandfather's father was seised on the day of his death, and which had been abated by a stranger. Litt. § 286. See **ABATEMENT**, § 2.

COSMUS.—Clean.—*Blount*.

COST, (of an article, defined). 2 Wash. (U. S.) 493, 498.

COST BOOK MINING COMPANY.—A partnership formed for the purpose of working a mine under the local customs in England, where the mine is situate. The shareholders appoint an agent, commonly called a "purser," for the purpose of managing the affairs of the mine subject to the control of the shareholders. They write in a book, called the "cost book," the agreement into which they have entered, and in the same book the purser inserts from time to time the receipts and expenditures of the mine, the names of the shareholders, their respective accounts with the mine, and transfers of shares. Each member may transfer or relinquish his share. As a general rule the capital is not paid up in the first instance, but calls are made from time to time at meetings of the members when required. Cost book companies are generally within the jurisdiction of the Stannaries Court (*q. v.*) Lind Part. 148; Tapp. Cost, *passim*; Stannaries Act, 1869; Chynoweth's Case, 15 Ch. D. 13.

COST PRICE, (defined). 18 N. Y. 337, 340.

CO-STIPULATOR.—A joint promisor.

COSTS.—

§ 1. **Attorney's costs**.—The term costs has two meanings. In one sense it denotes the charges which an attorney or solicitor is entitled to make and recover from the client or person employing him, as his remuneration for professional services, such as legal advice, attendances, drafting and copying documents, conducting legal proceedings, &c. In England, a solicitor's bill of costs is subject to special provisions as to taxation, &c., (*q. v.*) with a view to the protection of the client.

§ 2. **Litigant's costs**.—The term costs also denotes the expenses which a person is entitled to recover by reason of his being a party to legal proceedings. They include court fees, witness fees, &c., and also (in England), where the party is represented by a solicitor, the reasonable charges and fees of the solicitor and counsel. The amount of these costs is ascertained by the process of taxation (*q. v.*) which is regulated by certain principles of general application.

§ 3. **Costs from opponent.**—In contentious proceedings (such as an action to recover a debt or damages, &c.,) the successful party generally recovers his costs from his opponent, unless the court or judge otherwise orders, the rule now being, that the costs follow the event, not only on the main issues in the action, but also on interlocutory proceedings.

§ 4. **Costs out of estate.**—In administrative proceedings, *e. g.* actions concerning the administration of the estate of a deceased person, actions for partition, or for the execution of trusts, proceedings to ascertain the construction of a will, and bankruptcy and insolvency proceedings, those parties who have properly or necessarily taken part in the proceedings (such as the executors, trustees and persons beneficially interested, who have established their rights) commonly obtain their costs out of the estate or fund which is the subject of the proceedings. Dan. Ch. Pr. 1239, 1271.

§ 5. **Costs in the cause.**—The costs of the general or ordinary proceedings in an action or suit are called, "costs in the cause," or "costs in the action." Costs of some interlocutory proceedings are not included in the costs in the cause, unless so ordered. The costs of an interlocutory application are sometimes ordered to be the costs of one of the parties in any event; so that even if he loses the action, he is entitled to set off the amount of those costs against the costs in the cause which he has to pay.

§ 6. **Costs of the day.**—When a trial, motion, or other step in an action is put off at the request of one of the parties, the

court usually requires him to pay the other party the costs which he has been put to in preparing for the trial or motion, and which are thrown away by the postponement. These are called "costs of the day." Archb. Pr. 1208.

§ 7. **Double and treble costs.**—Some old statutes expressly or impliedly give a successful litigant in certain cases double or treble the amount which he would otherwise have been entitled to in respect of costs. These statutes were abolished, in England, by Stat. 5 and 6 Vict. c. 97.* See DIVES; DOUBLE COSTS; HIGHER AND LOWER SCALE; IN FORMA PAUPERIS; PAUPER; SECURITY; TREBLE COSTS.

COSTS, (defined). 58 Ala. 578; 9 Vr. (N. J.) 388.

— (a condition precedent to granting new trial). 3 Harr. (N. J.) 46.

— (confined to taxable costs). 9 Vr. (N. J.) 388.

— (in an award). 22 Wend. (N. Y.) 126, 128; 2 Wm. Bl. 953.

— (in reference to arbitrators). 7 Taunt. 213.

— (in statute concerning poundkeepers). 17 Me. 239.

— (in statute relative to offers of judgment). 23 Minn. 71.

— (includes what). 2 Code (N. Y.) 112; 4 How. (N. Y.) Pr. 196, 269; Wright (Ohio) 121; 6 Serg. & R. (Pa.) 85, 86; 3 Barn. & Ad. 237, 239.

— (of improvements). 2 J. J. Marsh. (Ky.) 524.

— (in rule of reference). 1 Bos. & P. 34.

— (on writ of restitution). South. (N. J.) 109.

— (rule of taxing). 3 Binn. (Pa.) 311, 323.

COSTS AND DAMAGES, (in an award). 13 Serg. & R. (Pa.) 71, 79.

COSTS, CHARGES AND EXPENSES, (in an award). 2 Wils. 267.

— (in indemnity bond). 14 Barb. (N. Y.) 202.

*In the Chancery Division of the English High Court, the following varieties of costs require notice: (1) The costs allowed a successful litigant in ordinary cases, are termed "costs as between party and party," and do not include all the expenses to which the party has been put. (2) In certain cases the court allows costs to be taxed upon a more liberal scale, so as to include many charges which would not be allowed in taxation, as between party and party. These are called "costs as between solicitor and client." The most usual instance of their allowance, is where a trustee or executor is a party to proceedings in his representative character, and there is a fund under the control of the court, out of which the costs can be paid. (Dan. Ch. Pr. 1240, 1299.) (3) In some cases the court goes even

further, and directs a trustee's costs to include "costs, charges and expenses" properly incurred by him, although not strictly costs in the action. These include such allowances as the trustee would be entitled to in an account between him and his *cestui que trust*. (*Id.* 1304.) As to costs in ecclesiastical cases, see Phillim. Ecc. L. 1297. As to costs in lunacy, see Pope Lun. 202 *et seq.* As to the costs of criminal prosecutions, see Stats. 7 Geo. IV. c. 64; 10 and 11 Vict. c. 82; 18 and 19 Vict. c. 126; 29 and 30 Vict. c. 52; 30 and 31 Vict. c. 35; 33 and 34 Vict. c. 23; 4 Steph. Com. 435; Pritch. Quar. Sess. 339. As to parliamentary costs given to the promoters of, or petitioners against a private bill, see Stats. 28 and 29 Vict. c. 27; 34 and 35 Vict. c. 3; May Parl. Pr. 805.

COSTS DE INCREMENTO.—Costs of increase, i. e. those extra expenses incurred, which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, &c.

COSTS, FULL, (in a statute). 1 Dowl. & Ry. 413, 415.

COSTS IN THE CAUSE, (what are). 7 Bing. 733, 734.

— (what are not). 9 Bing. 570, 574.

COSTS OF OBTAINING AN ACT OF PARLIAMENT, (what included). 4 Barn. & C. 962, 967.

COSTS OF PROVING THE DOCUMENT, (in N. J. practice act). 9 Vr. (N. J.) 388.

COSTS OF SUIT, (confined to legal costs). 1 Ashm. (Pa.) 110.

— (in insolvent act). 7 Johns. (N. Y.) 374, 375.

— (in rule of reference). Cowp. 127.

— (what included). 1 Hughes (U. S.) 340; 6 Serg. & R. (Pa.) 85, 86.

COSTS OF THE CAUSE, (when entitled to). 4 Paige (N. Y.) 257, 258.

COSTS OF THE DAY.—See Costs, § 6.

COSTS SHALL FOLLOW EVENT, (in judicature act). 2 Ex. D. 349.

COSTS SUSTAINED IN THE ACTION, (in an award). 1 H. Bl. 223.

COSTS THAT HAVE ACCRUED, (in a compromise). 50 Ala. 489.

COSTS TO ABIDE EVENT, (in common law procedure act). 2 Ex. D. 281.

— (meaning of "event"). 5 Q. B. D. 569.

COSTS TO ABIDE EVENT OF TRIAL, (meaning of "event"). L. R. 4 Q. B. 725.

COSTS TO ABIDE THE EVENT, (meaning of "event"). L. R. 8 Q. B. 280.

— (on rule for a new trial). 5 Barn. & Ald. 766; 1 Bing. 393; 8 Id. 21, 23; 1 Chit. 633 n.; 1 Moo. & Sc. 58; 2 Tyrw. 155.

— (on rule of reference). 2 Barn. & Ald. 597; 1 Chit. 183, 185, 325, 327; 8 Dowl. & Ry. 285, 287; 5 East 489; 9 Id. 436; 3 T. R. 138, 140.

COSTS TO FOLLOW THE EVENT, (in judicature act). 3 Ex. D. 261.

COSTUMBRE.—In the Spanish law, a law founded on a custom of long duration.

CO-SURETIES.—Joint sureties; two or more sureties to the same obligation.

COTA.—A cot or hut.—*Blount*.

COTAGIUM, or COTTAGIUM.—A small house or cottage.—*Spel. Gloss.*

COTARIUS.—A cottager, who held in free socage, and paid a stated firm or rent in provisions or money, with some occasional personal services.

COTELLUS, or COTERIA.—A small cottage, house, or homestead.—*Cowell*.

COTERELLI.—Peasant outlaws; robbers.—*Blount*.

COTERELLUS.—A servile tenant, who held in mere villenage, his person, issue and goods being disposable at the lord's pleasure.—*Cowell*.

COTERIE.—A fashionable association, or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss.—*Wharton*.

COTESWOLD.—A place where there is no wood.

COTLAND, or COTSETHLAND.—Land held by a cottager, whether in socage or villenage.—*Cowell*.

COTSETHLA — CONSETLE.—The little seat or mansion belonging to a small farm.

COTSETHUS, or COTSETUS.—A cottage-holder, who, by servile tenure, was bound to work for the lord.—*Cowell*.

COTSETHLAND.—The seat of a cottage with the land belonging to it.—*Spel. Gloss.*

COTTAGE.—A small house without lands belonging to it. Shep. Touch. 94; 15 Geo. III. c. 32.

COTTAGE, (defined). 2 Barn. & Ad. 628, 638.

COTTIER TENURE.—One where a laborer makes his contract for land without the intervention of a capitalist farmer, and where the conditions of the contract, especially the amount of rent, are determined not by custom, but by competition. Also a class of subtenants, who rent a cottage and an acre or two of land from small farmers. 1 Mill Pol. Ec. 383.

COTTON AND WOOLEN WASTE, (in policy of insurance). 13 Gray (Mass.) 139.

COTTON IN BALE, (meaning of). 2 Car. & P. 525.

COTUCA.—Coat armor.

COTUCHANS.—Boors, husbandmen.—*Domesday Book*.

COUCHANT.—Lying down; squatting. Applied to animals trespassing on the land of one other than their owner, for one night or longer. 3 Bl. Com. 9.

COUCHER, or COURCHER.—A factor who continues abroad for traffic, (37 Edw. III. c. 16;) also the general book wherein any corporation, &c., register their acts. 3 and 4 Edw. VI. c. 10.

COULD AND MIGHT, (in a declaration). 9 East 472, 482.

COUNCIL.—An assembly of persons for the purposes of concerting measures of state or municipal policy, hence called "councillors." See **PRIVY COUNCIL**.

COUNCIL OF CONCILIATION.—By the Act 30 and 31 Vict. c. 105, power is given for the crown to grant licenses for the formation of councils of conciliation and arbitration, consisting of a certain number of masters and workmen in any trade or employment, having power to hear and determine all questions between masters and workmen which may be submitted to them by both parties, arising out of or with respect to the particular trade or manufacture, and incapable of being otherwise settled. They have power to apply to a justice to enforce the performance of their award. The members are elected by persons engaged in the trade. *Dav. B. Soc. 232. See TRADE UNION.*

COUNCIL OF JUDGES.—Under the English Judicature Act, 1873, an annual council of the judges of the Supreme Court is to be held, for the purpose of considering the operation of the new practice, offices, &c., introduced by the act, and of reporting to a secretary of state, as to any alterations which they consider should be made in the law for the administration of justice. An extraordinary council may also be convened at any time by the lord chancellor. (Section 75.) The only meeting of the council which has hitherto taken place, was that held in November, 1880, to consider the advisability of abolishing the offices of the lord chief justice of the Common Pleas Division, and the lord chief baron of the Exchequer, and of consolidating the three common law divisions of the High Court.

COUNCIL OF THE NORTH.—A court instituted by Henry VIII., in 1537, to administer justice in Yorkshire and the four other northern counties. Under the presidency of Strafford, the court showed great vigor, bordering, it is alleged, on harshness. It was abolished by 16 Car. I., the same act which abolished the Star Chamber.—*Brown.*

COUNSEL.—A general name for counsellors and barristers, used especially in certain locutions. Thus, we speak of "instructing counsel," of "giving a brief to counsel," of "the plaintiff's counsel," and so on, meaning that the instructions or brief are given to a counsellor; that the plaintiff in a certain case is represented by a counsellor, &c. The word has no plural and is used alike of one or several. *See OF COUNSEL.*

COUNSEL, (interrogatories may be signed by). 3 Gr. (N. J.) 271.
 ——— (stipulation in a suit, by). 2 Cai. (N. Y. 250.)

COUNSEL'S SIGNATURE.—In former times, the appearance of the parties to an action at law was actual and personal in open court, and the pleadings consisted of an oral altercation by themselves, or their counsel, in the presence of the judges; and although the pleadings in an action came afterwards to be delivered in writing between the parties out of court, yet

they were still *supposed* to be delivered orally, as of old (at least for certain purposes), and required to bear the signature of some counsel, and in the Court of Common Pleas, of some serjeant even. And in the Court of Chancery, the signature of counsel to the pleadings was required, in order to vouch to the lord chancellor that the case was a proper one for equitable relief, so that the subpoena to the defendant to appear to and answer the bill of complaint, might issue at once, without the lord chancellor having to personally read through the bill. But the signature of counsel to common law pleadings became unnecessary under the C. L. P. Act, 1852, § 85; and such signature to chancery pleadings has become unnecessary under the Judicature Acts, 1873–5, (Order xix. 4.) But although such signature is now unnecessary to any such pleadings, it is not unusual (and, for obvious reasons, it is extremely desirable,) in all pleadings. Certain motions, also appeals to the house of lords, still require counsel's signature as a security, and in each case as a guarantee of the propriety of the application.—*Brown.*

COUNSELLOR—COUNSELLOR-AT-LAW.—A lawyer who advises clients, and, as an advocate, conducts the trial of a cause, or argues an appeal or important motion therein. The word "counsellor" is in many of the States applied to all lawyers, while in others no one can become a counsellor until he has been an attorney for a given time, and successfully passes a second examination as to his learning and other qualifications. *See ADVOCATE; ATTORNEY; BARRISTER.*

COUNT.—

§ 1. In criminal procedure, the statement of the indictment is divided into paragraphs called "counts." If the defendant is charged with several offences in any one count, the indictment is open to the objection of duplicity, or being double, which may be taken by demurrer, though it is cured by verdict. (Archb. Cr. Pl. 66.) In some cases, the indictment may charge several offences in several counts; but in other cases, if this is done, the court may quash the indictment or require the prosecutor to elect on which charge he will proceed. *Id.* 71. *See ATTEMPT.*

§ 2. In civil procedure, count originally meant the declaration in a real action. (Steph. Pl. (5 edit.) 30.) In a personal action, if the plaintiff included several causes of action in the same declaration, each section of the declaration was called a "count." (*Id.* 302.) It was usual to put at the end of a declaration a number of

claims analogous to that arising out of the real cause of action (*e. g.* in an action of debt the declaration concluded with claims for money paid by the plaintiff for the defendant at his request, for money received by the defendant for the use of the plaintiff, and for money found due from the defendant to the plaintiff on an account stated), and these were called "common counts." Count "cometh of the French word *conte*, which, in Latyne, is *narratio*." Co. Litt. 17 a, 303 a; Steph. Pl. (App.) 75.

COUNTÉE, or COUNT.—FRENCH: *com'te*; LATIN: *comes*. An earl.

The most eminent dignity of a subject before the conquest. He was *præfectus* or *præpositus comitatûs*, and had the charge and custody of the county, but this authority is now vested in the sheriff. 9 Co. 46.

COUNTENANCE.—In old English law, credit; estimation.—*Wharton*.

COUNTER.—The name of two prisons in London, the Poultry Counter and Wood Street Counter, afterwards consolidated into one new-built prison, for the use of the city, to confine debtors, peacebreakers, &c.—*Cowell*; *Tomlins*.

COUNTER AFFIDAVIT.—An opposing affidavit, or one which contradicts another affidavit. Affidavits to oppose motions are commonly called "counter affidavits."

COUNTER-BOND.—An indemnity bond. 2 Leon. 90.

COUNTER-CLAIM.—

§ 1. If the defendant in an action has a claim against the plaintiff, which he might have asserted by bringing a separate action against the plaintiff, he may raise it in the existing action by including in his answer a statement of the facts on which he bases his claim, and of the relief which he claims against the plaintiff; this is called a "counter-claim." And, in England, if the defendant has a claim connected with the subject of the action against the plaintiff and another person (*e. g.* a co-defendant or a stranger), he may set it up by counter-claim. In the latter case, the statement of defence has, in addition to the original title of the action, a new title setting forth the names of the persons against whom the counter-claim is set up; if any one of them is not a party to the action, he is served with a copy

of the defence, indorsed with a notice to appear, and is thenceforth in the same position as if he had been sued in an independent action by the defendant, (Judicature Act, 1873, § 24; *Furness v. Booth*, 4 Ch. D. 586, and the cases there cited; *Holloway v. York*, Week. N. (1877) 112; *Original Hartlepool Co. v. Gibb*, 5 Ch. D. 713; *Harris v. Gamble*, 6 Ch. D. 748;) except, of course, that his statement in answer to the counter-claim is called a "reply" and not a "defence." Rules of Court, xxii. 8.

§ 2. If the counter-claim is of such a nature that it cannot be conveniently disposed of in the pending action, or is otherwise objectionable, it is liable to be struck out. Coe Pr. 79.

§ 3. The court gives judgment both on the original claim and on the counter-claim, and, if the balance is in favor of the defendant, judgment is given for the defendant as if he were plaintiff in an action against the original plaintiff in the pending action. See RECOUPMENT; SET-OFF.

COUNTER-CLAIM, (defined). 7 Ind. 523; 8 How. (N. Y.) Pr. 122, 146, 205, 336; 12 *Id.* 310; 13 *Id.* 84; 60 *Id.* 45, 48; 35 Wis. 618, 626; 1 Wyom. T. 43, 49.

— (what constitutes). 12 How. (N. Y.) Pr. 310.

— (in rule of court). L. R. 5 C. P. D. 24.

COUNTER-DEED.—A secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

COUNTERFEIT.—An imitation of something made without lawful authority, and with a view to defraud by passing the false for the true.—*Wharton*.

COUNTERFEIT, (defined). R. M. Charl. (Ga.) 151.

COUNTERFEIT BILL, (defined). 1 Ohio St. 185.

COUNTERFEIT COIN.—Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination. Making or importing counterfeit coin, whether to pass for coin current, or to pass for gold or silver foreign coin, is felony. See UTTER.

COUNTERFEITER, (defined). 1 Stew. (Ala.) 384.

COUNTERFESANCE.—The act of forging.

COUNTER-LETTER.—In the civil law, a written agreement to reconvey property held under an absolute deed, as security only. 11 Pet. (U. S.) 351, 386. See *ANTICHRESIS*.

COUNTERMAND.—To countermand is to recall or revoke; thus, to countermand an authority is to revoke it. (Co. Litt. 52b. See *REVOCATION*.) Notice of trial in an action may be countermanded by consent of the parties, or by leave of the court or a judge.

COUNTERMARK.—A sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.—*Wharton*.

COUNTERPART.—The corresponding part or duplicate; the key of a cipher. When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the "original," and the rest are "counterparts." Where, however (as is the present practice), all the parties execute every part, all the parts are originals. (2 Bl. Com. 296.) A counterpart is the best evidence against the party executing it. See *DUPLICATE*; *INDENTURE*; *LEASE*.

COUNTERPLEA.—When the tenant in any real action, tenant by the courtesy, or in dower, in his answer and plea vouched any one to warrant his title, or prayed in aid of another, who had a larger estate, as of him in reversion, &c.; or where one who was a stranger to the action came and prayed to be received to save his estate; then that which the demandant alleged against it, why he should not be admitted, was called a "counterplea." It was a replication to *aid prier*, and was called "counterplea to the voucher." But when the voucher was allowed, and the vouchee came and demanded what cause the tenant had to vouch him, and the tenant showed his cause, whereupon the vouchee pleaded anything to avoid the warranty, that was termed "a counterplea of the warranty."—*Termes de la Ley*.

COUNTER-ROLLS.—The rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, &c. (3 Edw. I. c. 10.)—*Termes de la Ley*.

COUNTER-SECURITY.—A security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

COUNTER-SIGN.—The signature of a secretary or other subordinate officer to any

writing signed by the principal or superior, to vouch for the authenticity of it.

COUNTERSIGNED, (what is). 18 Johns. (N. Y.) 341, 346.

COUNTING HOUSE, (in a statute). L. R. 5 C. P. 252.

COUNTORS.—*FRENCH: countours.*

Serjeants-at-law, whom a man retains to defend his cause and speak for him in court, for their fees. 1 Inst. 17.

COUNT-OUT.—In England, forty members form a house of commons; and though there be ever so many at the beginning of a debate, yet, if during the course of it the house should be deserted by the members, till reduced below the number of forty, any one member may have it adjourned upon its being counted; but a debate may be continued when only one member is left in the house, provided no one choose to move an adjournment.—*Wharton*.

COUNTRY.—Used in certain antiquated locutions to signify (1) a jury, as in the expressions "trial by the country" (4 Bl. Com. 349), and "conclusion to the country," which was the mode by which a plaintiff or defendant in pleading offered his case for trial by jury (Steph. Pl. 79); (2) any place other than a court, as in the expressions "maintenance in the country" (see *MAINTENANCE*), and a "deed in the country," as opposed to an alienation by record, *i. e.* in court. Litt. § 728. See *IN PAIS*.

COUNTRY, (under act of congress means "whole nation"). 1 Blatchf. (U. S.) 218; 18 How. (U. S.) 521; 5 N. Y. Leg. Obs. 286.

— (in a statute). 5 Blatchf. (U. S.) 221.

COUNTRY STORE, (stock of). 13 Gray (Mass.) 139.

COUNTS, (forms of, in a declaration). 2 Green (N. J.) 539.

COUNTY.—*NORMAN-FRENCH: counte*, from *counte*, an earl or lord lieutenant. Britt. 274b; Co. Litt. 168a.

§ 1. In American law, a county is one of the civil divisions of a State for judicial and political purposes. In some States the counties are regarded as corporations, in others as *quasi* corporations. 1 Ill. 115; 3 Me. 131; 7 Mass. 461; 8 Johns. (N. Y.) 385.

§ 2. In English law, "county" or "shire" is a civil division of England and Wales, of which there are at present forty in England and twelve in Wales. The division is of importance in law with reference to the jurisdiction of commissioners of assize, justices of the peace, sheriffs, coroners, county courts, &c., and to parliamentary elections and local taxation. (1 Steph. Com. 126; Co. Litt. 109b, 168a. See *RATE*.) Ordinary counties are sometimes called "counties at large," to distinguish them from "counties corporate" or "counties of cities or towns," which are certain cities and towns, some with more, some with less territory annexed to them, and

having, by the special grace of various kings, the privilege to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates. Such are London, York, Bristol, and many others. (1 Bl. Com. 120.) For some purposes, however, these counties corporate are deemed part of the adjoining counties at large. Steph. Com. 133; Stats. 2 Will. IV. c. 45, § 17; 33 Geo. III. c. 52; 14 and 15 Vict. cc. 55 and 100; Reg. v. Crompton, 5 Q. B. D. 341. See COUNTY PALATINE; HUNDRED; SHERIFF.

COUNTY, (defined). 56 Ala. 64; 1 Bl. Com. 115.

—— (as meaning "people of the county"). 58 Mo. 175, 201.

—— (is a corporation). 6 Cal. 254; 15 Id. 33.

—— (in a grant to the people of). 58 Mo. 175.

—— (in a statute). 6 App. Cas. 887; Cro. Jac. 85, 178.

—— (in an indictment). 4 Car. & P. 363; Cro. Jac. 167.

COUNTY AFORESAID, (in a declaration). 2 W. Bl. 847; 3 Wils. 339, 340.

COUNTY AUTHORITIES, (defined). 6 Rich. (S. C.) 412.

COUNTY BLOCK, (on township plot). 17 Minn. 260.

COUNTY BOARD, (in State constitution). 76 Ill. 554; 82 Id. 78.

COUNTY BRIDGE, (defined). 40 Iowa 295.

—— (in highway act). L. R. 1 C. C. R. 237.

COUNTY COMMISSIONERS.—

County officers who, in some States, have charge of the fiscal matters of the county

i. e. the collection of taxes and disbursement of county moneys. In some States these officers are called "supervisors" (*q. v.*), and in New Jersey, "chosen freeholders" (*q. v.*)

COUNTY CORPORATE.—See COUNTY, § 2.

COUNTY COURTS.—

§ 1. In English law.—The modern or statutory county courts are local and inferior courts of record established throughout England by various acts of parliament (9 and 10 Vict. c. 95, amended and extended by numerous acts; see Poll. C. C. Pr. xxvi.) for the purpose of providing a cheap and summary mode of procedure in civil cases involving small amounts. For this purpose the country is divided into districts, in each of which is held a county court, presided over by a judge, who is assisted by a registrar and high bailiff (*q. v.*) Two or more districts are frequently formed into one circuit, in which one judge holds courts alternately. (Poll. C. C. Pr. 1 *et seq.*) The ordinary process of the court is by plaint and summons (*q. v.*), but in some cases proceedings by petition, similar to those in use in the Chancery Division of the High Court and the Bankruptcy Court, are applicable.*

*The English county courts are divisible into those having ordinary and those having extraordinary jurisdiction. The ordinary jurisdiction is again divisible into original and auxiliary.

Original jurisdiction.—The original jurisdiction may be said generally to extend to claims of debt or damages not exceeding £50, to claims for the recovery of land the yearly value of which does not exceed £20, and to claims for the administration of estates, execution of trusts, foreclosure and redemption of mortgages, specific performance, and proceedings under the Trustee Acts and Trustee Relief Acts, where the value of the estate, mortgage, property, &c., does not exceed £500; (For an enumeration of the statutes under which the county courts have jurisdiction in respect of friendly societies, agricultural holdings, &c., see Poll. C. C. Pr. xxxi. *et seq.*) also to contentious business in probate and administration matters where the estate of the deceased is under a certain value. *Id.* 331.

The auxiliary jurisdiction is principally applied in the trial of, or the taking of evidence in actions and other proceedings pending in the High Court. *Id.* xxxvi.

Extraordinary jurisdiction.—By Stat. 31 and 32 Vict. c. 71, provision is made for assigning to convenient county courts jurisdiction in admiralty matters, (namely, claims for salvage, towage, necessities, wages, collision, &c., not exceeding

a certain amount,) and by 31 and 32 Vict. c. 71, provision is made for the appointment of county courts to exercise the jurisdiction in bankruptcy which by that act is given to the county courts over all persons not residing within the London district. *Id.* xxxix.

Concurrent jurisdiction.—The High Court has concurrent jurisdiction with the county courts in matters within their ordinary jurisdiction, but in many cases where the county courts have jurisdiction a plaintiff who brings an action in the superior courts, though he is successful, runs the risk of losing his costs, and such actions may be remitted to the county court on the application of the defendant. (30 and 31 Vict. c. 142, §§ 5, 7; Judicature Act, 1873, § 67; Neale v. Clarke, 4 Ex. D. 286.) By the County Courts Act, 1867, § 28, no action which can be brought in a county court shall be brought in an inferior court not of record.

An appeal lies from the judgment of a county court (1) if given in its ordinary and admiralty jurisdiction, to a divisional court of the High Court of Justice, (Jud. Act, 1873, § 45; Rules of December, 1875; The Glannibanta, 2 P. D. 45;) (2) if given in its bankruptcy jurisdiction, to the chief judge of the London Bankruptcy Court.

Sheriff's county courts.—The old county court was presided over by the earl of the county, or

§ 2. In American law, county courts are courts of inferior jurisdiction in civil cases. They also have varied powers in the charge and care of persons and estates coming within legal guardianship; a limited criminal jurisdiction; appellate jurisdiction over justices of the peace, and numerous powers and duties in the administration of county affairs and business.—*Abbott*.

COUNTY COURT, (defined). 10 Bush (Ky.) 711.

— (means Court of Common Pleas). 8 Mass. 149.

— (in a statute). 15 Ill. 54.

COUNTY COURT; COURT OF COUNTY, (are convertible terms). 5 Sneed (Ky.) 183.

COUNTY COURTS, (what are). 19 Wend. (N. Y.) 27, 30; 25 *Id.* 9, 19.

COUNTY, OF THE, (defined). 3 Wend. (N. Y.) 329, 330.

COUNTY OFFICE, (in State constitution). 2 Barb. (N. Y.) 513; 7 *Id.* 30; 7 Heisk. (Tenn.) 472.

COUNTY OFFICER, (defined). 3 Wall. (U. S.) 93.

— (does not include county judge). 7 Heisk. (Tenn.) 472.

COUNTY PALATINE.—In English law, a county, the owner of which formerly had *jura regalia*, or royal franchises and rights of jurisdiction similar to those possessed by the crown in the rest of the kingdom; thus he had the power of pardoning crimes and appointing judges and officers within his county. Three counties palatine—Chester, Durham and Lancaster—still exist, but they have long been united to the crown, and assimilated in all important respects to the rest of the kingdom, though the duchy of Lancaster still has some local courts, as to which, see DUCHY OF LANCASTER; also, CHANCELLOR, § 4; CHANCERY, § 6; CLERK OF THE CROWN; PALATINE COURTS. 1 Steph. Com. 129 *et seq.*; 3 *Id.* 347; Jud. Act, 1873, § 99.

COUNTY PURPOSE, (what is included in). 1 Sneed (Tenn.) 637.

— (what is not included in). 14 Minn. 252; 23 Ohio St. 389.

COUNTY PURPOSES, (in tax law). 14 Minn. 252; 23 Ohio St. 389; 70 N. C. 644.

COUNTY RATE.—An imposition levied on the occupiers of lands in England, and applied to many miscellaneous purposes; among which the most important are those of defraying the expenses connected with prisons, re-imburse-

ing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police.—*Wharton*.

COUNTY, RIDING, OR OTHER DIVISION, (in a statute). Wilberf. Stat. L. 182.

COUNTY SESSIONS.—The General Quarter Sessions of the Peace for each county in England, held four times a year, viz., in the first week (on some day fixed by the magistrates) after the 11th of October, the 28th of December, the 31st of March, and the 24th of June, in every year, provision being made to prevent the April sessions clashing with the spring assizes.—*Wharton*.

COUPONS.—Interest and dividend certificates; also those parts of a commercial instrument which are intended to be cut, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to negotiable bonds and certificates of loan, interest upon which is payable at particular periods. When the interest is due, they are cut off and presented to the obligor for payment.

COUPON, (defined). 43 Me. 232, 238.

COUR DE CASSATION.—The French court of last resort in both civil and criminal cases. Its jurisdiction is appellate only.

COURIER.—An express messenger of haste.

COURSE.—A term used in surveying, meaning the direction of a line with reference to a meridian.—*Bouvier*.

COURSE OF ENTAIL, (in a will). L. R. 4 H. L. 543.

COURSE OF THE VOYAGE, (in marine insurance law). Marsh. Ins. 185.

COURSE OF TRADE AND DEALING USUAL AND ORDINARY, (in a statute). 11 East 127, 131.

COURSES AND DISTANCES, (in a deed). 14 Wend. (N. Y.) 671, 677; 16 *Id.* 285, 299; 19 *Id.* 320.

— (in pleading, in an action of ejectment). 2 Vt. 348.

— (acts and declarations of parties may control). 6 Wend. (N. Y.) 467, 469.

— (in a deed, controlled by fixed monuments). 8 Conn. 19, 24; 6 Mass. 131; 12 *Id.* 469; 2 Johns. (N. Y.) Cas. 350, 352; 1 Cow.

in his absence by the sheriff; the suitors, *i. e.* the freemen or landholders, were the judges. The county courts were the principal civil courts until the system of assizes (*q. v.*) was introduced, after which they fell into disuse, until nearly the whole business transacted in them was that

which they still retain, namely, the proclaiming of outlawries and the election of sheriffs. They were not courts of record. Poll. C. C. Pr. 1 1 Reeves Hist. Eng. Law 7; 3 Bl. Com. 36. See CITY OF LONDON COURT; COURT; COURTS OF REQUESTS.

(N. Y.) 605, 612; 5 *Id.* 371, 373; 6 *Id.* 706, 717; 7 *Id.* 723; 9 *Id.* 661; 4 Paige (N. Y.) 209, 213; 8 Wend. (N. Y.) 183, 190.

COURSES AND DISTANCES, (natural objects will control). 9 Cranch (U. S.) 173, 178; 4 Wheat. (U. S.) 445; 6 *Id.* 580; 7 *Id.* 10.

COURT.—NORMAN-FRENCH: *court* (Britt. 274a), which originally meant a manor or large farm; Low LATIN: *cortis* or *curtis*, from Latin *cohors*, *co*, a yard. Littré s. v. *Cour*.

§ 1. **Court** has the following meanings: (1) "A place where justice is judicially ministred" (Co. Litt. 58a); (2) the judge or judges who sit in a court, and (3) an aggregate of separate courts or judges, as when we speak of the English Supreme Court of Judicature (*q. v.*), which never sits as a court, being merely a name for the Court of Appeal and High Court of Justice. See COUNCIL OF JUDGES.

§ 2. **Of record.**—Courts are of two principal classes—of record and not of record. A court of record is one whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has authority to fine and imprison for contempt of its authority. 3 Steph. Com. 269.

§ 3. **Superior.**—Courts are also divided into superior and inferior, superior courts being those which are not subject to the control of any other courts, except by way of appeal.

§ 4. **Inferior courts** are those of a very limited jurisdiction, and which are subject to the control of other courts. In England the inferior courts include the county courts, the Mayor's Court of London, the Stannaries Court, the ecclesiastical courts, borough courts, courts baron, courts leet and other local courts. No action which can be brought in a county court may be brought in an inferior court not of record. When an inferior court refuses to exercise its jurisdiction, it may be compelled to do so by *mandamus*, and if it exceeds its jurisdiction it may be restrained by prohibition. The characteristics of inferior courts are referred to in detail in Mayor, &c., of London v. Cox, L. R. 2 H. L. 239. See MANDAMUS; PROHIBITION.

§ 5. **Supreme, or ultimate.**—A third class of courts may be said to consist of the Supreme Courts, which are not subject to the appeal of any other courts, and whose decisions are therefore final. These are

the Supreme Courts and Courts of Appeal in the various States, the House of Lords and the Privy Council in England. The so-called Supreme Court of Judicature is not a supreme court in this sense, being subject to the appellate jurisdiction of the House of Lords, nor is the Supreme Court of New Jersey, New York, or that of the District of Columbia, from which appeals lie to the court of last resort.

§ 6. **Civil and criminal.**—Lastly, courts are divided into civil, criminal and ecclesiastical. Those hitherto mentioned belong to the first class. The criminal courts in England include the High Court of Justice (in which is now vested the criminal jurisdiction of the Court of Queen's Bench and of the courts of assize under commissions of "oyer and terminer" and "gaol delivery," (*q. v.*)), the Central Criminal Court and the courts of magistrates and justices of the peace. As to the ecclesiastical courts, see that title. In America, the courts having criminal jurisdiction are called "Courts of Oyer and Terminer," "Courts of Sessions," "Courts of Quarter Sessions," and the County Courts and Courts of Common Pleas in the several States, also have criminal jurisdiction in certain cases. See the various titles.

COURT, (defined). 45 Iowa, 501, 503; 13 Vr. (N. J.) 379.

— (superior, defined). 4 Bosw. (N. Y.) 547.

— (inferior, under constitution). 18 Ala. 521.

— (as synonymous with "judge"). 3 Ind. 239; 53 Mo. 173; 19 Vt. 478.

— (need not have a clerk). 14 Ga. 596.

— (in State constitution). 2 Kan. 250; 40 Mich. 503.

— (in a rule of court). 8 How. (N. Y.) Pr. 31, 121, 123.

— (in a statute). 3 Ind. 239.

— (in a statute conferring jurisdiction). 128 Mass. 296.

— (in divorce law). 45 Iowa 501.

COURT BARON.—It has been said that in the term court baron, "baron" means merely a freeman who holds land, (Wms. Seis. 15, following, apparently, Co. Litt. 58a;) but this seems inconsistent with the old names given to the court, viz.: *court de baroun*, (Britt. 274a,) *curia baronis* E. C. *militis manerii sui prædicti*, (4 Inst. c. 57,) where "baron" clearly means the lord of the manor.

§ 1. **Freeholders.**—A Court Baron, in the original sense of the word, is a court in which the fretenants or freeholders of the manor are

the judges, and the steward of the manor is the registrar. (Co. Litt. 58 a.; 3 Steph. Com. 279.) In it, all suits concerning lands held of the manor might be, and in early times not unfrequently were, determined. (Wms. Seis. 16.) But their jurisdiction in real actions has been practically abolished, and now such courts are rarely held, except in those manors where the freeholders have a set of customs relating to fines, heriots, regulation of commons, and the like. *Elt. Copyh.* 239; *County Courts Act, 1867*, § 28.

§ 2. **Customary.**—A Customary Court Baron, is one which "doth concerne copiholders, and therein the lord or his steward is the judge." (Co. Litt. 58 a.; 4 Co. 26 b.) The province of such a court seems to be to deal with all matters concerning the rights of the copyholders, between themselves (as where their consent is to be given to an enclosure of part of the waste), but more especially to register alienations of the copyhold land, all of which were originally transacted in the Customary Court, and entered on the court rolls, whence the tenants are called "tenants by copy of court roll." (Co. Litt. 58 a.; *Elt. Copyh.* 242; *Burt. Comp. R. P.* 394; *Wms. Seis.* 36.) At the present day, a customary court may be held without the presence of any copyholder, unless the business to be transacted requires the consent of the homage. *See HUNDRED COURT; MANOR; PRESENTMENT; ROLL.*

COURT, BY THE, (in the jurat of an affidavit). 3 *Mau. & Sel.* 157.

COURT CHRISTIAN.—The old name for an ecclesiastical court (*q. v.*)

COURT FOR CROWN CASES RESERVED.—The court created by Stat. 11 and 12 Vict. c. 78, for the decision of questions of law arising on the trial of a person convicted of treason, felony, or misdemeanor, (*e. g.* at the Central Criminal Court, the assizes or quarter sessions,) and reserved by the judge or justices at the trial, for the consideration of the court. For this purpose, the judge or justices state and sign a case setting forth the question and the facts out of which it arises. (*Arch. Cr. Pl.* 191.) The jurisdiction is now exercised by the judges of the High Court of Justice, or five of them at the least. Their decision is final. *Judicature Act, 1873*, §§ 47, 100.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES.—This court was established by Stat. 20 and 21 Vict. c. 85, which transferred to it all jurisdiction then exercisable by any ecclesiastical court in England, in matters matrimonial, and also gave it new powers. The court consisted of the lord chancellor, the three chiefs, and three senior puisne judges of the common law courts, and the judge ordinary, who together constituted, and still constitute the "full court." The judge ordinary heard almost all matters in the first instance. By the *Judicature Act, 1873*, § 3, the jurisdiction of the court was transferred to the Supreme Court of Judicature; but the only effect of the transfer seems to be to have changed the name of the court to that of the Probate, Divorce and

Admiralty Division of the High Court of Justice, and the name of the judge ordinary, to that of the president of the division, for the practice of the court remains as before. *See PROBATE, DIVORCE, AND ADMIRALTY DIVISION.*

COURT FOR THE TRIAL OF SHORT, or SMALL CAUSES.—*See JUSTICE OF THE PEACE.*

COURT HAND.—That peculiarly strong, compact and uniform style of handwriting in which judicial records were written prior to the Stat. 4 Geo. II. c. 26.

COURT HOUSE, (in a deed). 71 *Ill.* 350.
— (in law of sales under execution). 55 *Mo.* 181.

COURT HOUSE DOOR, (in power to sell, in a mortgage). 59 *Mo.* 52.

COURT IN COURSE, (adjournment to, defined). 72 *Mo.* 290.

COURT, INFERIOR, (defined). 5 *Cranch (U. S.)* 185.

— (a circuit court is). 4 *Dall. (U. S.)* 8, 11.

COURT LANDS.—Domains or lands kept in the lord's hands to serve his family.

COURT LEET.—The lords of a great number of manors have the privilege of holding a court leet, which, so far as it is useful in the present day, is held for the purpose of presenting small offences in the nature of a common nuisance, which require immediate attention and redress. (*Elt. Copyh.* 239.) It is a court of record; the steward of the manor is the judge and the jury is formed from the inhabitants. (*Id.* 241.) Originally it was a court of criminal jurisdiction over the tenants and residents (or persons resident within the manor) (*Wms. Seis.* 16) in all matters in which the sheriff's tourn had jurisdiction, from which court it is said to be derived; it also had the "view of frank pledge" (*see FRANK PLEDGE*), (*Magna Charta* c. 35; 4 *Steph. Com.* 321;) but these portions of its jurisdiction are quite obsolete. *See COM-MORANT; MANOR; PRESENTMENT; SHERIFF.*

COURT MARTIAL.—A court convened by or under governmental authority to try an offence against military or naval discipline, committed by a soldier or sailor in the public service. Courts martial proceed and pass sentence according to the Articles of War, the Articles of the Navy (*q. v.*), and the acts regulating the discipline of the army and navy respectively. 2 *Steph. Com.* 589 *et seq.*

COURT OF ADMIRALTY.—*See ADMIRALTY; HIGH COURT OF ADMIRALTY.*

COURT OF ANCIENT DEMESNE.—This court, as its name implies, is a court in which the freeholders of land in ancient demesne are the judges, in much the same way as the

freeholders of an ordinary manor are the judges in a Court Baron (*q. v.*) The two courts closely resemble one another. 4 Inst. c. lviii. See ANCIENT DEMESNE; MANOR.

COURT OF APPEAL.—In England, the Court of Appeal is that division of the Supreme Court of Judicature (*q. v.*) which exercises appellate jurisdiction in all causes and matters originating in the Supreme Court. It consists of (1) five ex-officio judges—the lord chancellor, lord chief justice of England, master of the rolls, lord chief justice of the Common Pleas and lord chief baron of the exchequer, (Jud. Act, 1875, § 4,) who only sit when it is convenient and necessary for them to do so, and never all at the same time; and (2) six ordinary judges, styled “lords justices of appeal” (*q. v.*) The lord chancellor also has power to summon not more than four additional judges from the Queen’s Bench, Common Pleas, Exchequer and Probate Divisions of the High Court to attend as judges of the Court of Appeal (*Id.*), but the exercise of this power has to a great extent, if not altogether, been made unnecessary by the addition of the three justices of appeal by the Appellate Jurisdiction Act, 1876. (See LORDS JUSTICES OF APPEAL.) The Court of Appeal generally sits in two divisions, one at Lincoln’s Inn to take appeals from the Chancery and Probate Divisions (including admiralty business) and from the Bankruptcy Court; the other at Westminster, to take appeals from the common law divisions.

§ 2. The Court of Appeal hears appeals from all the divisions of the High Court, and from the courts whose jurisdictions are transferred to the High Court, thus exercising the jurisdiction of the old Court of Appeal in Chancery, of the Exchequer Chamber, and of the Privy Council in admiralty and lunacy appeals. The appellate jurisdictions of the Palatine Court of Lancaster and of the Stannaries Court are also transferred to the Court of Appeal. Jud. Act, 1873, § 18. See HIGH COURT OF JUSTICE.

COURT OF APPEAL IN CHANCERY.—This court consisted of the lord chancellor and two lords justices of appeal (*q. v.*) When they all sat together they constituted the full court; but generally the lords justices sat together as one court and the lord chancellor alone as another court. (Haynes Eq. 33.) The court heard appeals from the master of the rolls and the vice-chancellors, and from the London Bankruptcy Court, and also had jurisdiction in lunacy (*q. v.*); and from its decisions in most cases an appeal lay to the House of Lords. The jurisdiction of the court is now transferred to the Court of Appeal (*q. v.*)

COURT OF APPEALS.—The courts of last resort in Kentucky, Maryland and New York; also a court of recent erection having extensive appellate jurisdiction (especially in criminal cases) in Texas.

COURT OF APPEALS IN CASES OF CAPTURE.—A court created by congress under the articles of confederation, before

the adoption of the United States constitution, having appellate jurisdiction in prize cases. See 1 Dall. 95; 2 *Id.* 19, 160; 5 Cranch (U.S.) 115.

COURT OF ARBITRATION OF THE CHAMBER OF COMMERCE.—A court of arbitrators, created for the convenience of merchants in the city of New York, by act of the legislature of New York. (Laws, 1874, ch. 278; Laws, 1875, ch. 495, (*q. v.*)) It decides disputes between members of the Chamber of Commerce, and between members and outside merchants who voluntarily submit themselves to the jurisdiction of the court.

COURT OF ARCHES.—An ecclesiastical court exercising appellate jurisdiction over each of the diocesan courts within the province of Canterbury. It may also take original cognizance of causes by letters of request from one of those courts. (Phillim. Ecc. L. 1202.) The judge is called the “dean of arches” or the “official principal of the court;” he is also the official principal of the Chancery Court of York (see CHANCERY, § 7,) and is appointed by the two primates. Public Worship Regulation Act, 1874, § 7.

§ 2. The court is “so called of Bow Church in London, by reason of the steeple thereof raised at the top with stone pillars in fashion like a bow bent archwise; in which church this court was ever wont to be held.” Phillim. Ecc. L. 259. See DEAN OF ARCHES; PROVINCIAL COURTS.

COURT OF ATTACHMENTS.—The lowest of the forest courts, held before the verderors of the forest once in every forty days, to receive from the foresters or keepers their attachments or presentments against vert and venison, and to enroll or certify them to the court of justice-seat or *swein mote*. 3 Bl. Com. 71, 72; *Termes de la Ley*; 3 Steph. Com. 439.

COURT OF AUGMENTATION.—See AUGMENTATION.

COURT OF CHANCERY.—See CHANCERY.

COURT OF CHIVALRY, or court military, was a court not of record, held before the lord high constable and earl marshal of England. It had jurisdiction, both civil and criminal, in deeds of arms and war, armorial bearings, questions of precedence, &c., and as a court of honor. It has long been disused. 3 Bl. Com. 103; 3 Steph. Com. 335, n. (1).

COURT OF CLAIMS.—A court created by congress in which claims against the United States government, for damages arising out of matters of contract, may be prosecuted. The court has no

equity powers, and cannot pass upon causes of action sounding in tort. (8 Wall. (U. S.) 269; 9 *Id.* 156.) It consists of five judges, three of whom constitute a quorum, and the concurrence of three is necessary to the validity of a judgment. It sits annually and its judgments are, in certain cases, reviewable by the United States Supreme Court. This court has a series of reports of its own, bearing its name and now numbering some seventeen volumes.

COURT OF COMMISSIONERS OF SEWERS.—*See* COMMISSIONERS OF SEWERS.

COURT OF COMMON PLEAS.—*See* COMMON PLEAS.

COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK.—The oldest court in the State of New York. Its jurisdiction is unlimited as respects amount, but restricted to the city and county of New York as respects locality. It has also appellate jurisdiction of cases tried in the Marine Court and District Courts of New York City. A full history of this court is given in 1 E. D. Smith (N. Y.) 17.

COURT OF CONVOCATION.—*See* CONVOCATION.

COURT OF DELEGATES.—*See* DELEGATE, § 2.

COURT OF EQUITY.—A court which proceeds and administers justice in accordance with principles of equity, as distinguished from a court of common law jurisdiction, which cannot apply those principles. *See* CHANCERY; EQUITY.

COURT OF ERRORS AND APPEALS.—The court of last resort in the State of New Jersey. Formerly, the ultimate court of appeal in New York was so called.

COURT OF EXCHEQUER.—*See* EXCHEQUER, § 2.

COURT OF EXCHEQUER CHAMBER.—*See* EXCHEQUER CHAMBER.

COURT OF FACULTIES.—*See* FACULTY.

COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.—A court of criminal jurisdiction in New

Jersey, derived from the English Court of Quarter Sessions. *See* GENERAL SESSIONS.

COURT OF GENERAL SESSIONS.—A court of jurisdiction chiefly criminal, in some of the States. The New York court of this name is held only in the county of New York, by a single judge (either the recorder, the city judge, or the judge of the General Sessions), and frequently two terms or branches of the court are held at the same time. Its original jurisdiction extends to all offences, capital or otherwise (but subject in some cases to removal for trial into the Oyer and Terminer), and it also hears appeals from the Court of Special Sessions

COURT OF HUSTINGS.—A court in the city of London analogous to the sheriff's county court (3 Steph. Com. 293, *n.* (w), *see supra*, p. 307, *note*), which it resembles in having formerly had jurisdiction in causes of action arising within its district, namely, the city.

COURT OF IMPEACHMENT.—A court empowered to try charges of misconduct on the part of public officers, in proceedings instituted for their removal from office. The United States Senate is sometimes organized as such a court, and State senates may also be. There was a separate judicial tribunal in New York, prior to the adoption of the constitution of 1846, for the trial of impeachments. *See* N. Y. Code of Pro. (1849), § 9; *also*, IMPEACHMENT.

COURT OF JUSTICIARY.—A Scotch court of general criminal jurisdiction of all offences committed in any part of Scotland, both to try causes and to review decisions of inferior criminal courts. It also has appellate jurisdiction in civil causes involving small amounts.

COURT OF KING'S BENCH.—*See* BANCUS REGIS; KING'S BENCH; QUEEN'S BENCH.

COURT OF MARSHALSEA.—*See* MARSHALSEA.

COURT OF NISI PRIUS.—*See* NISI PRIUS.

COURT OF ORDINARY.—Courts of probate, in Georgia, South Carolina and Texas are so called. *See* COURT OF PROBATE; SURROGATE.

COURT OF OYER AND TERMINER.—*See* OYER AND TERMINER.

COURT OF PASSAGE.—An inferior court, possessing a very ancient jurisdiction over causes of action arising within the borough of Liverpool. It appears to have been also called the "Borough Court of Liverpool." (Laughton v. Taylor, 6 Mees. & W. 695.) It has the same jurisdiction in admiralty matters as the Lancashire County Court. Rose, Adm. 75.

COURT OF PECULIARS.—This court, according to Blackstone, is a branch of, and annexed to, the Court of Arches, and has jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. (3 Bl. Com. 65.) It seems, however, to have been practically abolished by the Stats. 3 and 4 Vict. c. 86, and 10 and 11 Vict. c. 98. Phillim. Ecc. L. 260.

COURT OF PIEDPOUDRE, or PIEPOWDERS.—A court held in fairs, to do justice to buyers and sellers, and for redress of disorders committed in them. So called, because they are most usual in summer, when the suitors to the court have dusty feet; and from the expedition in hearing causes proper thereunto, before the dust goes off the feet of the plaintiffs and defendants. (4 Inst. 272.) It is a court of record incident to every fair; and to be held only during the time that the fair is kept. (Doct. & S. c. 5.) As to the jurisdiction, the cause of action for contract, slander, &c., must arise in the fair or market; and not before at any former fair, nor after the fair. It is to be for some matter concerning the same fair or market; and be done, complained of, heard and determined the same day. Also, the plaintiff must make oath that the contract, &c., was within the jurisdiction and time of the fair. (Stat. 17 Edw. IV. c. 2; 2 Inst. 220.) The Court of Piepowders may hold plea of a sum above 40s., and 'tis said judgment may be given at another fair, at a court held there. And a writ of error lies upon a judgment given. (Dyer 133; *F. N. B.* 18.) The steward before whom the court is held is the judge, and the trial is by merchants and traders in the fair, and the judgment against the defendant shall be *quod amercietur*.—*Jacob.*

COURT OF PLEAS.—A court of the county palatine of Durham, having a local common law jurisdiction. It was abolished by the Judicature Act, which transferred its jurisdiction to the High Court. Jud. Act, 1873, § 16; 3 Bl. Com. 79. See COUNTY PALATINE; PALATINE COURTS.

COURT OF POLICIES OF INSURANCE.—A court of special jurisdiction, which anciently took cognizance of cases involving claims made by those insured upon policies in the city of London.—*Bouvier.*

COURT OF PROBATE —

§ 1. In American law.—A court, so called in many of the States, (in others it is styled "Court of Ordinary" (*q. v.*), "Or-

phans' Court" (*q. v.*), "Surrogate's Court" (*q. v.*)) which has jurisdiction of the probate of wills, the issuing of letters testamentary or of administration, the settlement of decedents' estates, guardianship of infant heirs, control over personal representatives, &c. In some States there is also added a limited jurisdiction in civil actions and criminal prosecutions.

§ 2. In English law.—By the Stat. 20 and 21 Vict. c. 77, it was enacted that the voluntary and contentious jurisdiction and authority of all ecclesiastical, peculiar, manorial and other courts and persons in England having jurisdiction or authority to grant probate of wills or letters of administration should cease, and that such jurisdiction and authority should thenceforth be exercised in the name of her majesty in a court to be called the "Court of Probate," consisting of a judge and a number of registrars. (See REGISTRAR.) By the Judicature Act, 1873, the jurisdiction of the court was transferred to the Supreme Court of Judicature, the principal effect of the transfer being to change the name of the court to that of the Probate, Divorce and Admiralty Division of the High Court of Justice (*q. v.*), and to alter the practice in contentious business. See ACTION, § 11; CAVEAT, § 2; CITATION, p. 211, *note*; PLEADING; PROBATE; WARNING.

COURT OF QUEEN'S BENCH.—See QUEEN'S BENCH.

COURT OF RECORD.—See COURT, § 2.

COURT OF RECORD, (defined). 34 Cal. 391.

COURT OF REGARDS.—One of the old English courts of the forest, held once in every three years, for the lawing or expeditation of dogs, *i. e.* the removal of the balls or claws of a dog's fore feet. 3 Bl. Com. 71, 72.

COURT OF REVIEW.—A part of the old Court of Bankruptcy under Stats. 1 and 2 Will. IV. c. 56, and 5 and 6 Vict. c. 122, exercising a kind of supervision or appellate jurisdiction over the commissioners. It was abolished in the year 1847. Robs. Bankr. 25, 81.) See BANKRUPTCY COURTS; COMMISSIONERS IN BANKRUPTCY, *ante* p. 236 *n.*

COURT OF SESSION.—The supreme court of civil jurisdiction in Scotland.

COURT OF SESSIONS.—Courts of criminal jurisdiction existing in California, New York, and one or two other of the United States.

COURT OF SPECIAL SESSIONS.—A court for the trial of petty offences in the city and county of New York. It has exclusive jurisdiction in

cases of misdemeanor unless the accused elects to be tried in the Court of General Sessions (*q. v.*) to which last mentioned court *certiorari* lies from the Court of Special Sessions.

COURT OF STANNARIES.—*See* STANNARIES.

COURT OF STAR CHAMBER.—*See* STAR CHAMBER.

COURT OF SUMMARY JURISDICTION, (in licensing act). 3 Q. B. D. 13.

COURT OF SWEINMOTE.—In old English law, one of the forest courts, having a somewhat similar jurisdiction to that of the court of attachments (*q. v.*)

COURT OF THE CLERK OF THE MARKET.—An English court of inferior jurisdiction held in every fair or market for the punishment of misdemeanors committed therein, and the recognizance of weights and measures; but this latter jurisdiction was taken away from the clerk of the market by Stat. 5 and 6 Will. IV. c. 63.

COURT OF THE CORONER.—In English law, a court of record for the holding of coroners' inquests. *See* CORONER.

COURT OF THE DUCHY CHAMBER OF LANCASTER.—A court held before the chancellor of the duchy or his deputy, and having jurisdiction in all matters of equity relating to lands held of the crown in right of the duchy of Lancaster; these are said to include a large district of land within the city of Westminster. 3 Bl. Com. 78; 3 Steph. Com. 347, n. (b).

COURT OF THE LORD HIGH STEWARD.—An English court for the trial of peers charged with treason or other felony, or misprision of treason or felony.

COURT OF THE STEWARD AND MARSHAL.—This court was erected by Stat. 33 Hen. VIII. c. 12, with a jurisdiction to inquire of, hear, and determine, all treasons, misprisions of treason, murders, manslaughters, blood sheddings, and other malicious strikings, in or within the limits (*i. e.* within 200 feet of the gate) of any of the palaces and houses of the king, or any other place where he resided (4 Inst. 133).—*Brown. See* MARSHALSEA.

COURT OF WARDS AND LIVERIES.—A court of record erected in the time of Henry VIII. (32 Hen. VIII. c. 46, and 33 Hen. VIII. c. 22,) with jurisdiction over infants, idiots, &c., and having power to grant licenses to widows to marry a second time. It was abolished by Stat. 12 Car. II. c. 24.

COURT ROLL.—*See* COPYHOLD, § 1; COURT BARON, § 2.

COURTS, (in a statute). 2 Watts (Pa.) 271, 272.

— (“martial” and “civil,” distinguished) South. (N. J.) 311.

COURTS BARON AND OTHER COURTS, (extends to courts at Westminster). Wilberf. Stat. L. 184.

COURTS ECCLESIASTICAL.—*See* ECCLESIASTICAL COURTS.

COURTS OF ASSIZE AND NISI PRIUS.—*See* ASSIZE; NISI PRIUS.

COURTS OF AUDIENCE.—Ecclesiastical Courts, in which the primates once exercised in person a considerable part of their jurisdiction. They seem to be now obsolete, or at least to be only used on the rare occurrence of the trial of a bishop. Phillim. Ecc. L. 1201, 1204.

COURTS OF CONSCIENCE.—These were the same as Courts of Request (*q. v.*)

COURTS OF JUSTICES OF THE PEACE.—*See* JUSTICE OF THE PEACE.

COURTS OF LAW, ANY OF THE, (includes inferior as well as superior). 7 East 84, 89.

COURTS OF PRINCIPALITY OF WALES.—A species of private courts of a limited though extensive jurisdiction, which, upon the thorough reduction of that principality and the settling of its polity in the reign of Henry VIII., were erected all over the country. These courts, however, have been abolished by 1 Will. IV. c. 70; the principality being now divided into two circuits, which the judges visit in the same manner as they do the circuits in England, for the purpose of disposing of those causes which are ready for trial.

COURTS OF REQUEST.—Inferior courts, in England, having local jurisdiction in claims for small debts, established in various parts of the kingdom by special acts of parliament. They were abolished in 1846, and the modern county courts (*q. v.*) took their place. 3 Steph. Com. 283.

§ 2. There was also a minor court of equity, called the “Court of Requests,” presided over by the lord privy seal and the masters of the requests (similar to the masters in chancery), which entertained suits by poor persons. It was virtually abolished in Queen Elizabeth’s reign, by a decision of the Court of Queen’s Bench. 1 Spenc. Eq. 351; 4 Inst. 97.

COURTS OF SURVEY.—Courts for the hearing of appeals by owners or masters of ships, from orders for the detention of unsafe ships, made by the English board of trade, under the Merchant Shipping Act, 1876. (Section 6.) A court of survey consists of a judge summoned by the registrar from a list of wreck commissioners (*q. v.*) stipendiary magistrates, &c., which is provided for the purpose, and of two assessors; one appointed by the board of trade, and the

other summoned by the registrar out of a list of persons provided for the purpose. (Section 7.) Rules of Court of Survey, 1876.

COURTS OF THE CINQUE PORTS.—See CINQUE PORTS, § 3.

COURTS OF THE COUNTIES PALATINE.—See COUNTY PALATINE; DUCHY OF LANCASTER; PALATINE COURTS.

COURTS OF THE UNITED STATES.—These are the Senate of the United States, sitting as a court of impeachment; the Supreme Court; the Circuit Courts; the District Courts; the Supreme Court of the District of Columbia; the Territorial Courts, and the Court of Claims. See the several titles.

COURTS OF THE UNITED STATES, (in acts of congress). 1 MacArth. (U. S.) 507.
(territorial courts are). 3 Sawy. (U. S.) 262.

COURTS OF THE UNIVERSITIES of Oxford and Cambridge have jurisdiction in all personal actions to which any member or servant of the respective university is a party, provided that the cause of action arose within the liberties of the university, and that the member or servant was resident in the university when it arose, and when the action was brought. (3 Steph. Com. 299; Stat. 25 and 26 Vict. c. 26, § 12; 19 and 20 Vict. c. 17.) Each university court also has a criminal jurisdiction in all offences committed by its members. 4 Steph. Com. 325.

COURTS OF WESTMINSTER HALL.—The superior courts, both of law and equity, were for centuries fixed at Westminster, an ancient palace of the monarchs of England. Formerly, all the superior courts were held before the king's capital justiciary of England, in the *Aula Regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to another. This was found to occasion great inconvenience to the suitors, to remedy which it was made an article of the great charter of liberties, both of King John and King Henry III., that "common pleas should no longer follow the King's Court, but be held in some certain place," in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. The courts of equity also sit at Westminster, nominally, during term time, although, actually, only during the first day of term, for they generally sit in courts provided for the purpose only, or in the neighborhood of Lincoln's Inn.—*Brown*.

COUSENAGE.—See COSINAGE.

COUSIN.—A cousin is any collateral relation except brothers and sisters, and

their descendants, and the brothers and sisters of any ancestor. The child of A.'s uncle or aunt is called his "cousin-german," or "first cousin," and the child, grandchild, &c., of such cousin is called his "first cousin once, twice, &c., removed." The grandchild of A.'s great-uncle is his second cousin, and the child, grandchild, &c., of such cousin is his second cousin, once, twice, &c., removed, and so on. In old English it is a term for any collateral relative.—*Wharton*.

COUSIN AND HEIR-AT-LAW, (in a declaration). 7 Dowl. & Ry. 517.

COUSINS, (in a will). 13 Cent. L. J. 5, and cases cited; 2 Bro. Ch. C. 125; 8 Com. Dig. 472; 2 Cox Ch. 187; 15 Ch. D. 528.

COUSINS, FIRST AND SECOND, (in a will, who are included). 2 Bro. Ch. C. 125.

COUSTUMIER.—A collection of customs and usages recognized by the ancient law of France.

COUSTOM.—Custom; duty; toll; tribute. 1 Bl. Com. 314.

COUTHUTLAUGH.—A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offence he underwent the same punishment as the outlaw himself.—*Bract*. 128 b; *Spel. Gloss*.

COVENABLE.—Convenient or suitable; also written "convenable."—*Cowell*.

COVENANT.—NORMAN-FRENCH: *covenant* (Britt. 242a); LATIN: *convenire*, to agree.

A promise under seal (Shep. Touch. 160), *i. e.* a promise, agreement or contract contained in a deed or instrument sealed and delivered by the promisor, who is called the "covenantor," the promisee being called the "covenantee." A covenant, being a contract, is in many respects subject to the same rules as other contracts; as to these, see CONDITION; CONTRACT; PROMISE.

§ 2. **Express and implied.**—Covenants are either express or implied. By an implied covenant (or covenant in law) is generally meant one created by the law irrespectively of the intention of the parties. Thus, in a lease for years the word "demise" creates a covenant by the lessor for quiet enjoyment by the lessee (*i. e.* that he shall occupy the land free from eviction and disturbance by the lessor), unless the lease includes an express covenant to the same effect. (Woodf. L. & T. 155; 1 Dav.

Prec. Conv. 106.) There are also implied covenants in the more accurate sense of the term. Thus, the *reddendum* of a lease is an implied covenant by the lessee for payment of the rent. *Id.* 107; *Duke of St. Albans v. Ellis*, 16 East 352. See EXPRESS; IMPLIED; TACIT.

§ 3. **Real and personal.**—Covenants were formerly divided into real and personal. A real covenant was one by which a man bound himself to pass or convey lands, &c., to another, so that the land itself could be recovered, *e. g.* a covenant to levy a fine or a warranty (*q. v.*); a personal covenant, on the other hand, merely gave the right to recover damages for non-performance. (Shep. Touch. 161; Co. Litt. 384b; 3 Bl. Com. 157.) Real covenants, in this sense, no longer exist (Stat. 3 and 4 Will. IV. c. 27, § 36); the term "real covenant" is, however, sometimes used to denote a covenant running with the land. 1 Dav. Prec. Conv. 110; *infra* § 5.

§ 4. A personal covenant may deal with any subject, *e. g.* the payment of a sum of money, the execution of work and labor, &c., or it may relate to or be connected with land. Covenants connected with land are divided into those which are annexed to an estate in the land, and collateral covenants. Shep. Touch. 161.

§ 5. **Covenants running with the land.**—A covenant annexed to an estate in land, or a "covenant running with the land," is one the benefit or burden of which passes to an assignee of the estate when the owner assigns it. Thus, if a lessee of buildings covenants to repair them, and assigns the lease, the covenant binds the assignee. (Woodf. L. & T. 146; *Spencer's Case*, 5 Co. 16; *Leake Cont.* 615; *Poll. Cont.* 214.) So we speak of covenants being annexed to, or running with, a reversion. Thus, a covenant to pay rent runs with the reversion, *i. e.* every assignee of the reversion can enforce the covenant against the tenant. (*Leake Cont.* 620; See PRIVACY.) Some covenants run with the land, whether assigns are mentioned in them or not, while others only do so where assigns are expressly mentioned. 1 Dav. Prec. Conv. 110.

§ 6. **Collateral, or in gross.**—Opposed

to such covenants are collateral covenants, or covenants in gross, namely, to do something not concerning the land demised or conveyed, "as if the lessee covenants for him and his assigns to build a house upon the land of the lessor which is no parcel of the demise, . . . it shall not bind the assignee." *Spencer's Case*, 5 Co. 16b; 1 Sm. Lead. Cas. 60.

§ 7. **Covenant running with the land in equity.**—A covenant, however, though it does not run with the land, may be binding in equity upon every person who takes an assignment with notice of it. Such a covenant is sometimes called a "covenant running with the land in equity." See *Renals v. Cowlshaw*, 9 Ch. D. 125.

§ 8. **Covenants for title.**—Covenants are known by names indicating their object or purport. (See COVENANT TO STAND SEIZED.) Thus, on every conveyance, mortgage, &c., the grantor enters into covenants for title, usually four in number, namely: (1) That he has seisin and a good right to convey the lands; (2) that they shall be quietly enjoyed; (3) that they are free from incumbrances; and (4) that the grantor and his heirs will make any further assurance which may be required to vest the lands in the grantee, his heirs or assigns. 2 Dav. Prec. Conv. 191.

§ 9. In England, a vendor of land only enters into qualified covenants for title, by which his responsibility is limited to the acts of those who have been in possession since the last sale. A mortgagor gives absolute covenants. Trustees, mortgagees, and other persons having no beneficial interest in the property, merely covenant that they have not incumbered it. 1 *Id.* 122; *Wms. Real Prop.* 447; *Elphinst. Conv.* 122.

§ 10. By the English Conveyancing Act, 1881, the insertion of the usual covenants for title in a conveyance for valuable consideration, (whether by a beneficial owner or by a trustee, mortgagee, or representative,) is in many cases made unnecessary, as the act provides that where the grantor is in the deed expressed to convey in a certain capacity, (namely, as "beneficial owner," "trustee," "mortgagee," &c.,) then the deed shall be deemed to include the covenants for title, appropriate to that capacity. The capacity in which the grantor conveys is expressed in the operative words, "A. B., as beneficial owner, hereby grants ('or conveys') to C. D.," &c. The appropriate covenants for title are also implied in a mortgage, where the mortgagor is expressed to convey as "beneficial owner," and in a settlement, where the grantor is expressed to convey as "settlor."

COVENANT, (defined). 8 Ala. 320.

—— (what words are necessary to make a). 5 Cow. (N. Y.) 171, 172; 16 Serg. & R. (Pa.) 98, 111.

—— (by several persons may be taken distributively, though no express words of severality). 1 Johns. (N. Y.) Cas. 319, 326.

—— (breach of). 3 Com. Dig. 268.

—— (when an action of, will lie). 2 Ld. Raym. 1536.

—— (action of, by one partner against another). 24 Wend. (N. Y.) 153, 158.

—— (release of all demands in a). 2 Mod. 280, 281.

COVENANT, ACTION OF.—An action *ex contractu* which lies, at common law, where plaintiff claims damages for breach of a covenant under seal.

COVENANT AGAINST INCUMBRANCES.—A covenant that there are no incumbrances upon the land conveyed. *See* INCUMBRANCE.

COVENANT AND GRANT, (are words of covenant). Dyer 374 b, n. (18).

COVENANT COLLATERAL.—*See* COVENANT, § 6.

COVENANT FOR FURTHER ASSURANCE.—A covenant by which the covenantor agrees to perform such reasonable acts in addition to such as have already been done, as shall be necessary for the completion of the transfer made or intended to be made, at the requirement of the covenantee.—*Bowvier*.

COVENANT FOR QUIET ENJOYMENT.—In leases, the lessor usually covenants for quiet enjoyment by his lessee of the premises demised, so long as the lessee observes and performs the covenants and conditions of the lease. A vendor usually gives the like covenant, but without prejudice to his lien.

COVENANT, GRANT AND AGREE THAT A. SHALL HAVE LAND FOR THREE YEARS, (in a covenant). Cro. Car. 207.

COVENANT IN DEED.—An express covenant; a covenant inserted in express terms in the deed or contract.

COVENANT IN LAW.—*See* COVENANT, § 2.

COVENANT INHERENT.—A covenant which relates directly to the land itself or subject-matter granted. Shep. Touch. 161.

COVENANT NOT TO SUE.—A covenant by one having a right of action against another person, by which he agrees not to sue to enforce such right of action. Such a covenant, if "perpetual," operates as a release (*q. v.*) of the right of action; otherwise, if the covenant be "limited" as to time.

COVENANT OF RIGHT TO CONVEY.—A covenant to the effect that the covenantor has capacity to convey, and title to the land intended to be conveyed.

COVENANT OF SEISIN.—A covenant to the effect that the covenantor has the very estate, both in quantity and quality, which he professes to convey.

COVENANT OF WARRANTY.—*See* WARRANTY.

COVENANT PERSONAL.—*See* COVENANT, §§ 3, 4.

COVENANT REAL.—*See* COVENANT, § 3.

COVENANT REAL, (defined). 6 Conn. 249.

COVENANT RUNNING WITH THE LAND.—*See* COVENANT, §§ 5-7.

COVENANT TO CONVEY.—A covenant by which the covenantor agrees to convey to the covenantee a certain estate, under certain circumstances.

COVENANT TO STAND SEISED.—A conveyance adapted to the case where a person seised of land in possession, reversion, or vested remainder, proposes to convey it to his wife, child or kinsman. In its terms it consists of a covenant by him, in consideration of his natural love and affection, to stand seised of the land to the use of the intended transferee. Before the statute of uses this would merely have raised a use in favor of the covenantee; but by that act this use is converted into the legal estate, and the covenant therefore operates as a conveyance of the land to the covenantee. It is now almost obsolete. 1 Steph. Com. 582; Wms. Seis. 145. *See* CONSIDERATION; CONVEYANCE; STATUTE OF USES.

COVENANTED, (in a declaration). 1 Saund. 291, n. (1).

—— (in a lease). 8 Mod. 33.

COVENANTEE.—One in whose favor a covenant is made.

COVENANTOR.—One who makes and undertakes the performance of a covenant.

COVENANTS, DEPENDENT AND INDEPENDENT.—Where the obligation to perform one covenant depends upon the performance of another covenant, the two covenants are called "dependent," while a covenant which must be performed regardless of whether any other one be performed or not, is called an "independent covenant."

COVENANTS FOR TITLE.—See COVENANT, §§ 8-10.

COVENANTS, GENERAL AND SPECIFIC.—The former relate to land generally and place the covenantee in the position of a specialty creditor only, the latter relate to particular lands and give the covenantee a lien thereon.—*Brown*.

COVENANTS, JOINT AND SEVERAL.—The former bind both or all the covenantors together, the latter bind each of them separately. A covenant may be both joint and several at the same time, as regards the covenantors; but as regards the covenantees, they cannot be joint and several for one and the same cause (5 Co. 19a), but must be either joint or several only. Covenants are usually joint or several according as the interests of the covenantees are such; but the words of the covenant, where they are unambiguous, will decide, although where they are ambiguous, the nature of the interests as being joint or several is left to decide.—*Brown*.

COVENANTS PERFORMED.—A plea in an action of covenant, under the Pennsylvania practice. See 2 Yeates (Pa.) 107.

COVENANTS, (the different kinds). 3 Ala. 330.

—— (mutual, defined). 4 Wheel. Am. C. L. 13.

—— (dependent and independent). 8 Wheat. (U. S.) 217; 2 Green (N. J.) 446; 5 Halst. (N. J.) 304; 3 Harr. (N. J.) 377; 5 Johns. (N. Y.) 78, 179; 5 Wend. (N. Y.) 496, 497; 4 Rawle (Pa.) 26, 35; 3 Wheel. Am. C. L. 195, 408; 4 Id. 11; 1 Saund. 60, n. (1), 320 n. (4).

COVENANTS PERFORMED, *absque hoc*, (in a covenant). 6 Pa. St. 398.

COVENANTS PROPER, (in an agreement). 12 Ves. 185, 189; 15 Id. 258, 266.

COVENANTS, USEFUL AND REASONABLE, (in a lease, with usual covenant). 3 Anstr. 700.

COVENANTS, USUAL, (in an agreement). 15 Ves. 528.

COVENT.—A contraction, in the old books, of the word "convent."

COVENTRY ACT.—The Stat. 22 and 23 Car. II. c. 1, for punishing the offence of mayhem. It was so called because enacted in consequence of a public assault on Sir John Coventry. The act was long since abolished.

COVERED BY INSURANCE, (goods to be, as soon as received). 120 Mass. 453.

COVERT—COVERTURE.—A married woman is called, in Norman-French, a *feme covert*, because she is under the protection of her husband. Coverture means (1) the condition of a married woman, or the fact of her being married, and (2) the continuance of the marriage. Co. Litt. 112a; 1 Bl. Com. 442. See MARRIAGE.

COVERT-BARON.—A wife who is under the protection of her husband.

COVIN.—Apparently from Norman-French *covénir*, to agree. See COVENANT.

"Covin is a secret assent determined in the hearts of two or more to the prejudice of another; as if a tenant for term of life, or tenant in tail, will secretly conspire with another, that the other shall recover against the tenant for life the land which he holds, &c., in prejudice of him in the reversion. Or if an executor or administrator permit judgments to be entered against him by fraud, and plead them to a bond, or [if] any fraudulent assignment or conveyance be made, the party grieved may plead covin and relieve himself." (*Termes de la Ley*, s. v.; Co. Litt. 357a.) Covin, therefore, seems to have merely a negative effect, *i. e.* it avoids the transaction of which it forms part, but does not give rise to a liability, as does conspiracy or fraud. The term, however, is not now in common use. See *Girdlestone v. Brighton Aquarium Company*, 3 Ex. D. 137; 4 Id. 107. See COLLUSION.

COVIN, (defined). 3 Com. Dig. 283

COVINOUS.—Fraudulent.

Cow, (defined). 2 East P. C. 616; 1 Leach C. C. 105.

— (as distinguished from "heifer"). 8 Allen (Mass.) 403, 404.

— (in exemption act). 11 Gray (Mass.) 211.

— (in indictment). 1 Chit. Gen. Pr. 86.

COWARDICE.—Timidity; fear of facing danger; pusillanimity. Cowardice is an offence punishable both in the army and navy of the United States by court martial.

CRAFT.—A guild.

CRAFT, (means "sailing vessels"). 21 Gratt. (Va.) 685.

— (includes steamboats). *Ibid.*

— (in steam inspection laws). 2 Woods (U. S.) 318.

CRANAGE.—A liberty to use a crane for landing goods from vessels at creeks or wharves and to make profit of it; also the money paid and taken for the same.—*Termes de la Ley*.

CRASSA NEGLIGENTIA.—Gross neglect; absence of ordinary care and diligence. 82 N. Y. 72.

CRASTINO, or **CRASTINUM**.—The morrow after. Used of the return day of writs, which were returnable on the second day of the term, *e. g.* on the "morrow after" the first day. 2 Reeves Hist. Eng. Law 56, 57.

CRATES.—An iron gate before a prison. 1 Vent. 304.

CRAVE.—To ask or demand; as to crave oyer of the letters testamentary in a suit brought by an executor; to crave oyer of the bond sued on, &c. *See* OYER.

CRAVEN, or **CRAVANT**.—A word of disgrace and obloquy, pronounced on either champion, in the ancient trial by battle, proving recreant, *i. e.* yielding. Glanville calls it *infestum et inverecundum verbum*. His condemnation was *amittere liberam legem, i. e.* to become infamous, and not to be accounted *liber et legalis homo*, being supposed by the event to have been proved forsworn, and not fit to be put upon a jury or admitted as a witness.—*Wharton*.

CREAMER.—A foreign merchant, but generally taken for one who has a stall in a fair or market.—*Blount*.

CREANSOR.—A creditor.—*O. N. B.* 66.

CREATED AND MANIFESTED, (in a statute relating to trusts). 65 Me. 500.

CREATED BY FRAUD, (in bankrupt act). 45 Vt. 154.

CREATED OR DECLARED, (in a statute relating to trusts). 65 Me. 500.

CREATION, (of corporations). 16 Barb. (N. Y.) 188; 21 Pa. St. 188.

CREDENTIALS.—Papers which give a title or claim to confidence; as the letters of commendation and power given by a government to an ambassador or envoy, which give him credit at a foreign court.—*Burrill*.

CREDIBILITY OF WITNESS, (how impeached). 7 Conn. 66, 70; 13 Johns. (N. Y.) 504, 506; 2 Wend. (N. Y.) 555, 558; 8 Wheel. Am. C. L. 508.

CREDIBLE WITNESS, (defined). 26 Conn. 416, 425; 18 Ga. 40; 3 Harr. & M. (Md.) 531; 4 Desaus. (S. C.) 279.

— (synonymous with "competent witness"). 9 Pick. (Mass.) 350; 2 Bail. (S. C.) 24; 1 Chit. Gen. Pr. 360.

— (to a will). 17 Pick. (Mass.) 134; 106 Mass. 476; 7 Halst. (N. J.) 72; 2 Bail. (S. C.) 24.

— (in a statute). 16 Serg. & R. (Pa.) 82, 85, 315, 316; 2 Chit. Gen. Pr. 150; 12 East 250, 252; 2 Saund. Pl. 1264; Str. 1253, 1254; 1 Wm. Bl. 93, 98; Willes 665.

— (in a statute relating to attestation of wills). 5 Mass. 219, 229; 12 Mass. 358; 9 Pick. (Mass.) 350; 23 *Id.* 10, 17.

CREDIT — CREDIBILITY.—Primarily these words signify belief in a person's trustworthiness.

§ 1. **Witness**.—Thus, in the law of evidence, the objections which were formerly sufficient to make a witness incompetent are now in general only available as affecting his credibility, or his worthiness to be believed. Such are: the fact of his having an interest in the result of the proceeding, the fact of his having been convicted of felony, of his being under the age of fourteen years, &c. Credibility is a question for the jury. *Best Ev.* 189 *et seq.* *See* COMPETENCY; DISCREDIT.

§ 2. **Payment**.—When a person agrees to postpone the payment of money to which he would otherwise be entitled, he is said to give credit. Thus, if A. sells goods to B. and the price is to be paid at a future time, this is a sale upon credit. *See* CREDITOR; DEBT; LETTER OF CREDIT; MUTUAL CREDITS.

CREDIT, (defined). 1 Mass. 472; 24 N. Y. 64, 71.

— (of "individual" and "government," defined). 3 Ala. 258.

— (chose in action is not, within attachment act). 9 Mass. 537.

— (in a guarantee). 2 Chit. 403.

— (letter of). 3 Cranch (U. S.) 493; 4 *Id.* 224, 234; 5 *Id.* 142; 7 *Id.* 69; 4 Dall. 133, 134; 1 Mass. (U. S.) 323, 334; 5 Pet. (U. S.)

624; 10 *Id.* 494; 4 Johns. (N. Y.) 476; 8 *Id.* 92; 16 Serg. & R. (Pa.) 212.

CREDIT—MUTUAL CREDIT, (in a statute). 1 Atk. 228, 229; Mont. Set-off 52; 3 T. R. 507, *n.*; 7 *Id.* 378, 380; 8 Taunt. 22.

CREDIT OF A WITNESS, (how to be impeached). 4 Car. & P. 392; 10 Ves. 50; 3 Ves. & B. 93.

CREDIT OF THE LENDER, (defined). 3 N. Y. 344, 356.

CREDIT THE DRAWER, (at foot of promissory note). 28 Pa. St. 233.

CREDITOR.—

§ 1. **In general.**—A person to whom a debt is owing by another person, called the "debtor." The creditor is called a "simple contract creditor," a "specialty creditor," a "bond creditor," or a "judgment creditor," according to the nature of the obligation giving rise to the debt (*see* CONTRACT; DEBT); and if he has issued execution to enforce a judgment, he is called an "execution creditor." He may also be a sole or a joint creditor. *See* JOINT.

§ 2. **Secured and unsecured.**—In the law relating to the administration of the assets of bankrupts, companies in liquidation, and insolvent persons or estates, creditors claiming to share in the assets are divided into secured and unsecured. A secured creditor is a person who holds a security on the property of the individual, company or estate, and includes not only persons holding mortgages, charges and liens, but also judgment creditors who have levied execution by seizure of property belonging to the insolvent (Robs. Bankr. 256; *Slater v. Pinder*, L. R. 6 Ex. 228; *Exp. Roche*, L. R. 6 Ch. 795; *In re Printing, &c., Co.*, 8 Ch. D. 535; *Exp. Evans*, 13 *Id.* 252), or have obtained and served attachment or garnishee orders. *In re Watt*, W. N. (1878) 70; *Silkstone Coal Co.*, 11 Ch. D. 160; *Exp. Schofield*, 12 *Id.* 337; *Levy v. Lovell*, 14 *Id.* 234.

§ 3. **In bankruptcy.**—In bankruptcy, under the English system, a secured creditor is, for the purpose of petitioning for adjudication, proving his debt, receiving dividends, and voting, deemed to be a creditor only in respect of the balance due to him after realizing or deducting the value of his security, unless he gives up his security. If he does not comply with these conditions, he is excluded from all share in the dividends. (Bankruptcy Act, 1869, §§ 12, 16, 40.) In order to prevent persons from underestimating the value of their securities, it is also provided that the trustee shall have power to purchase the security of any creditor at the

value which he has set on it; or if the creditor has realized it at a price exceeding his valuation, he is bound to pay the surplus to the trustee. Bankr. Rules, 1870, rules 99, 100, 101.

§ 4. **In administration and windings-up.**—The Judicature Act, 1875, § 10, provides that the rules of the bankruptcy law as to the respective rights of secured and unsecured creditors, shall prevail and be observed in the administration by the court of the assets of any person dying insolvent after the commencement of the act, and in the winding-up of an insolvent company under the Companies Act, 1862. The principal effect of this section appears to be to abolish the rule in *Kellock's Case* (L. R. 3 Ch. 789), so as to compel a secured creditor to deduct the value of his security and prove for the balance of his debt. It also appears to have the effect of depriving a creditor of the right to interest on his debt from the date of the judgment or order of administration, which is treated as equivalent to an adjudication in bankruptcy. (*In re Summers*, 13 Ch. D. 136.) Whether it entitles the executor (in the case of an administration) or the liquidator (in the case of a company) to purchase the security of a creditor at his own valuation is not clear; taken in its literal meaning the section would not have that effect. It has, however, given rise to many speculations and inconsistent decisions, and a creditor would not be safe in relying on its omissions.

§ 5. **Petitioning creditor.**—In the law of bankruptcy and winding-up a petitioning creditor is a creditor who presents a petition for adjudication or winding-up. In bankruptcy his debt must amount to £50 (Robs. Bankr. 153, 176; Act of 1879, § 6. *See supra*, § 3.) In winding-up, his debt must exceed £50. Companies Act, 1862, § 80. As to frauds on creditors, *see* FRAUD; FRAUDULENT CONVEYANCES.

CREDITOR, (in bankrupt act). 50 Wis. 283; L. R. 1 C. P. 204; L. R. 1 Ex. 91, 100; L. R. 1 Ch. 357; L. R. 2 Ex. 396.

—— (under commission of bankruptcy). 3 Wils. 262.

—— (under a judgment). 1 Harr. (N. J.) 364.

—— (in statute of frauds). 20 Ala. 732; 1 Gilm. (Ill.) 397; 81 Ill. 186; 11 Hun (N. Y.) 282.

—— (in the statute of fraudulent conveyances). 4 Bibb (Ky.) 166.

—— (in recording act). 1 Gilm. (Ill.) 187.

—— (in usury law). 9 Cush. (Mass.) 482.

—— (in statute concerning witnesses). 9 Cush. (Mass.) 483.

—— (in a treaty). 3 Dall. 109, 249.

CREDITOR HOLDING SECURITY, (in bankruptcy act). L. R. 10 Q. B. 485.

CREDITOR IN LEGAL CONTEMPLATION, (is one who has a judgment). 6 B. Mon. (Ky.) 606.

CREDITOR OF A CORPORATION, (a stockholder may come in as). 8 Cow. (N. Y.) 387, 392.

CREDITOR WHO HAS OBTAINED A JUDGMENT, (in attachment act). L. R. 8 Q. B. 18.

CREDITORS' BILL.—A bill in equity filed by one or more creditors, by

and on behalf of himself or themselves, and all other creditors who shall come in under the decree, for an account of the assets and a due administration of the estate. In the United States the term is also used of a suit to enforce a judgment as a lien in equity against the property of the debtor; in the Code States, proceedings supplementary to execution in the original action, have, however, for the most part, superseded the creditors' bill in this sense of the term.

CREDITORS' BILL, (in a statute). 52 Ill. 98.

CREDITORS, (who are, under statute). 8 Cow. (N. Y.) 406; 5 *Id.* 67; 72 N. Y. 424.

— (in statute of frauds). 64 Ala. 405.

— (in mechanics' lien law). 1 Gilm. (Ill.) 423; 3 *Id.* 511.

CREDITORS AND SUBSEQUENT PURCHASERS, (in a statute). 5 Cranch (U. S.) 165.

CREDITRIX.—A female creditor.

CREEK.—

§ 1. In English law.—(1) A small inlet of the sea with shore on either side. (2) A part of a haven whence anything is landed out of the sea.—*Termes de la Ley*.

§ 2. In American law.—A recess, cove, bay, or inlet in the shore of a river or of the sea, and not a separate or independent stream; though it is sometimes used in the latter meaning.

CREEK, (defined). 38 N. Y. 103, 104; 5 Com. Dig. 167.

— (as distinguished from "run"). 7 Wheat. (U. S.) 162.

— (is a highway). 7 Mass. 188.

— (what is not). 7 Com. Dig. 291.

— (in a deed). 1 N. Y. 96.

CREMENTUM COMITATUS.—The increase of a county. The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.—*Wharton*.

CREPARE OCULUM.—To put out an eye. An offence punishable among the Saxons by a fine of fifty shillings.—*Wharton*.

CREPUSCULUM.—In old English law, the twilight; the light before the rising, or after the setting of the sun. (4 Bl. Com. 224.) Burglary could not be committed while the crepusculum lasted. 1 Russ. Cr. 820.

Crescente malitia crescere debet et poena (2 Inst. 479): Vice increasing, punishment ought also to increase.

CREST.—In heraldry, crest signifies the devices set over a coat-of-arms.

CRETINUS.—A sudden stream or torrent an inundation.—*Cowell*.

CRETIO.—In the Roman law, *cretio* was the choice made by a *haeres*, to take the estate; and it came naturally to denote the time limited for the heir to choose. Where the time so limited ran on, whether the heir knew or did not know that he was heir, it was called *continua* or *certorum dierum*. When it only ran after he knew of the fact of his being heir, it was called *vulgaris*, because that was the commoner way.—*Brown*.

CREW.—This word seems to be used in three senses in the maritime law: (1) The entire ship's company, including both officers and seamen; (2) the sailors, officers and seamen, but not the master; (3) the seamen only, without the master or officers. See 3 Sumn. (U. S.) 209–216.

CREW, (when includes "officers"). Wilberf. Stat. L. 259.

— (in statute punishing cruelty to). 3 Sumn. (U. S.) 209, 212.

— (in piracy act). 6 Rob. (La.) 534.

— (salvage to be paid to). 3 Sumn. (U. S.) 209.

CREW LIST.—One of a ship's papers, containing a list of the crew, required to be kept by act of congress, passed March 3, 1813.

CRIER.—An officer of a court, whose duty is to make proclamation of the opening and adjournment of the court; to call parties, jurors and witnesses in causes; to assist in the administration of oaths; to impose silence during the proceedings, and to perform other incidental services. (See Bacon's Works, iv. 316.)—*Burrill*.

CRIM. CON.—An abbreviation of "criminal conversation" (*q. v.*)

CRIME.—The word "crime" has no technical meaning in the law, but it is generally used to include all acts amounting to treason, felony or misdemeanor (*q. v.*) The distinction between a "crime" and a "tort," or civil injury, is, that the former is a breach and violation of the "public rights" and duties due to the whole community, considered as such, in its social aggregate capacity, (4 Bl. Com. 5; Steph. Crim. Dig. 8;) and is said to be committed against the public peace; whereas the latter is merely an infringement or privation of the civil rights which belong to indi-

viduals considered merely in their individual capacity.

CRIME, (defined). 48 Ind. 123; 46 N. Y. 470, 473; 31 Wis. 383; 3 Wheel. Cr. Cas. 545, 583; 4 Bl. Com. 5; 4 Steph. Com. 52.

—— (synonymous with "misdemeanor"). T. U. P. Charlt. (Ga.) 235, 237; 60 Ill. 168; 48 Ind. 123; 9 Wend. (N. Y.) 212; 31 Wis. 383.

—— (offence made indictable by statute is a). 9 Wend. (N. Y.) 212, 221.

—— (in U. S. constitution). 24 How. (U. S.) 66, 102; 3 Vr. (N. J.) 139, 144; 9 Wend. (N. Y.) 212, 118; 1 Wheel. Cr. Cas. 513, 522.

—— (in a statute). 60 Ill. 168; 1 Chit. Gen. Pr. 686.

CRIME AGAINST NATURE.—See SODOMY.

CRIME AGAINST NATURE, (defined). 10 Ind. 355.

CRIMEN.—Crime (*q. v.*) Also an accusation or charge of crime.

CRIMEN FALSI.—Anciently, the fraudulent affixing the seal of the court to any purported legal process, *e. g.* signing writs or charters with the king's seal, or a summons with the seal of the county court; hence, in more modern parlance, the crime of forgery (*q. v.*)

CRIMEN FALSI, (defined). 55 Ala. 239; 13 Ga. 97; 29 Ohio St. 351, 358.

—— (what included). 55 Ala. 239, 242; 29 Ohio St. 351, 358.

—— (distinguished from "infamous crime"). 4 Sawy. (U. S.) 211.

Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo regis rapto vel invento, brevia, cartasve consignaverit (Fleta 1, c. xxiii.): The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.

CRIMEN FURTI.—The offence of theft.

CRIMEN INCENDII.—The offence of arson.

CRIMEN LÆSÆ MAJESTATIS.—The crime of injured majesty; treason.

Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam (3 Inst. 210): The crime of treason exceeds all other crimes in its punishment.

CRIMEN RAPTUS.—The offence of rape.

CRIMEN ROBERIÆ.—The offence of robbery.

CRIMES, (defined). 1 Bish. Cr. L. § 43.

CRIMES AND OFFENCES AGAINST THE LAW OF CHINA, (in extradition law). L. R. 5 P. C. 179.

CRIMES BY BANKRUPTS AGAINST BANKRUPTCY LAW, (in extradition law). L. R. 8 Q. B. 410; 4 Ex. D. 63.

CRIMINAL.—(1) Relating to crime; having the character of a crime. (2) A person indicted for a public offence and found guilty.

CRIMINAL, (used in reference to judicial proceedings). 7 B. Mon. (Ky.) 12.

CRIMINAL ACTION, CRIMINAL CASE.—See CRIMINAL PROSECUTION.

CRIMINAL CASES, (defined). 68 Ill. 372; 39 Iowa 435; 26 Mich. 424.

—— (what are). T. U. P. Charlt. (Ga.) 175, 181.

—— (what are not). 26 Mich. 22; 14 Ga. 354.

—— (in city ordinance). 26 Mich. 422.

CRIMINAL CONVERSATION.—Adultery (*q. v.*) in its aspect of a tort for which the husband of the woman concerned may sue the adulterer for damages. The action of criminal conversation is nominally abolished in England, by 20 and 21 Vict. c. 85, § 59; but the 33d section gives a husband the right to claim damages from an adulterer, either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to that object, and the damages claimed must be assessed by a jury upon the same principles, and subject to the same rules as were formerly applicable to the trial of actions for criminal conversation, and the court has power to direct the mode of their application, and may direct that they be settled for the benefit of the children of the marriage, or as a provision for the wife. The action has not been abolished in America.

CRIMINAL COURTS.—As to the courts of criminal jurisdiction, *see* the titles following COURT; *also* ASSIZE; CENTRAL CRIMINAL COURT; COURT FOR CROWN CASES RESERVED; LORD HIGH STEWARD; OYER AND TERMINER; QUARTER SESSIONS; QUEEN'S BENCH. As to the procedure in criminal cases, *see* CERTIORARI; INDICTMENT; INFORMATION; JURY; SUMMARY; TRIAL.

CRIMINAL INFORMATION.—See INFORMATION.

CRIMINAL LAW.—

§ 1. That part of the law which has relation to crimes and their punishment.

§ 2. In England, the term comprises, (1) the general criminal law administered throughout the kingdom, and (2) the crown law, as administered by the Queen's Bench Division of the High Court of Justice, consisting principally of a sort of *quasi* criminal law, as indictments for nuisances, the repair of roads, bridges, &c., informations, *quo warranto*, *mandamus*, *certiorari*, and the judicial decision of questions concerning the poor laws.

CRIMINAL LETTERS.—In the Scotch law, a writ or summons issued at the commencement of a criminal prosecution, summoning the accused to appear for trial at a stated day.

CRIMINAL OFFENCE, (in Michigan constitution of 1835). 2 Doug. (Mich.) 334.

CRIMINAL PROCEEDING, (what is). 2 Q. B. 1.

CRIMINAL PROCESS.—Warrants of arrest, or other process issued as the commencement of a criminal prosecution.

CRIMINAL PROCESS, (when to issue). 1 Stew. (Ala.) 26.

CRIMINAL PROSECUTION.—An action or proceeding instituted in a court having criminal jurisdiction, on behalf of the sovereign or the public, for the purpose of securing the conviction and punishment (if guilty) of one accused of crime.

CRIMINAL SUITS, (what are). 5 Rawle (Pa.) 119, 122.

CRIMINALIS—CRIMINAL.—See IN CRIMINALIBUS, &c.

CRIMINALITER.—Criminally. Bract. 101 b.

CRIMINATE.—To furnish evidence tending to prove the commission of an offence. It is a rule of law that a witness shall not be compelled to testify to matters which tend to criminate himself. For the authorities on this subject, see 2 Crim. Law Mag. 313 *et seq.*

CRIMP.—One who decoys and plunders sailors under cover of harboring them.

CRITICISM, (of a book, when not libelous). 1 Campb. 351, 358, *n.*

CROCARDS.—A sort of old base money. 4 Bl. Com. 98.

CROCIA.—The *crozier*, or pastoral staff

CROCIARIUS.—A cross-bearer, who went before the prelate.—*Wharton*.

CROFT.—A little close adjoining to a dwelling-house or homestead, and enclosed for pasture or arable, or any particular use.—*Blount; Cowell; Termes de la Ley*.

CROFT, (defined). 2 Bl. Com. 19, *n.* (9).

CROISES—CROISADO.—See CROYES.

CROITEIR.—A crofter, one holding a croft.

CROP.—The seeds or products of the harvest in corn or grain. See AWAY-GOING CROP; EMBLEMENTS.

CROPPER, (defined). 2 Rawle (Pa.) 11. — (distinguished from "tenant"). 71 N. C. 7.

CROSS.—A mark made by persons who are unable to write, instead of their names. When properly attested, and proved to have been made by the party whose name is written with the mark, it is generally admitted as evidence of the party's signature.—*Bouvier*.

CROSS ACTION.—When A. brings an action against B., and B., before final judgment is given in that action, brings another action against A. in respect of a claim arising out of the same subject matter, this second action is called a "cross action." (See *Davis v. Hedges*, L. R. 6 Q. B. 687.) Formerly it was not uncommon in chancery practice for the defendant in a suit to bring a cross bill against the original plaintiff, either for discovery or for some relief which he could not obtain in the original suit. The suits were then generally consolidated and one judgment given in the two. Now, however, the procedure by counter-claim (*q. v.*) has almost superseded this mode of proceeding, except in actions of tort, such as assault, &c. As to cross actions against foreign governments, see STATE. Cross actions are also sometimes brought in the admiralty courts in respect of damage by collision of ships. See *Chapman v. Royal Netherlands Steam Nav. Co.*, 4 P. D. 157. See COLLISION; LIMITATION OF LIABILITY.

CROSS APPEAL.—Where both parties appeal from a judgment, the appeals are sometimes called "cross appeals."

CROSS BILL.—A bill in equity brought by a defendant in a suit, against the plaintiff, or other defendants in the same suit, or against both the plaintiff and such other defendants, touching matters in question in the original suit. Story Eq. Pl. § 399.

CROSS BILL. (defined). 17 How. (N. Y.) 591; 14 Ga. 167, 674; 35 N. H. 235, 251.

— (should not introduce new matter). 17 How. (U. S.) 591.

CROSS DEMAND.—A set-off; a demand which may be the subject of counter-claim or set-off (*q. v.*)

CROSS ERRORS.—Errors being assigned by the respondent in a writ of error, the errors assigned on both sides are called "cross errors."

CROSS-EXAMINATION.—See EXAMINATION.

CROSS REMAINDER.—See REMAINDER.

CROSS REMAINDER, (how created). 4 Wheel. Am. C. L. 393; 8 Com. Dig. 448.

— (what is not). 4 Day (Conn.) 368, 372.

CROSS-RULES.—Under the former English practice, these were rules where each of the opposite litigants obtained a rule *nisi*, as the plaintiff to increase the damages, and the defendant to enter a nonsuit. Rules to show cause are now abolished by the Judicature Act, 1875, Ord. liii. r. 2. Except in the case of motions for new trials, (*Id.* Ord. xxxix. r. 1,) or to set aside judgments as wrongly entered on the findings of fact, (*Id.* Ord. xl. rr. 4-6;) and it is provided that notices of motion shall be given where the motion is not merely for a rule to show cause, (*Id.* Ord. liii. r. 3.)—*Wharton*.

CROSSED CHECK.—See CHECK, §§ 3-5.

CROSSING A ROAD, (in a statute). 2 Chit. 412, 413.

CROSSING THE BAR, (in description of land). 66 Me. 354.

CROWN.—FRENCH: *couronne*; DUTCH: *kroone*; LATIN: *corona*.

(1) An ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used in England, when speaking of the sovereign, herself, or the rights, duties, and prerogatives belonging to her. (2) A silver coin of the value of five English shillings.

CROWN CASES RESERVED.—See COURTS FOR CROWN CASES RESERVED.

CROWN DEBTS.—See DEBTS.

CROWN LANDS.—See DEMESNE.

CROWN LAW.—A phrase, in England, equivalent to criminal law (*q. v.*)

CROWN OFFICE IN CHANCERY.—One of the offices of the English High Court of Chancery, now transferred to the High Court of Justice. The principal official, the clerk of the crown, is an officer of parliament, and of the lord chancellor, in his non-judicial capacity, rather than an officer of the courts of law. (Second Rep. Legal Dep. Comm. 39.) His principal duties are to make out and issue writs of summons and election for both houses of parliament, and to keep the custody of poll-books and ballot-papers. Nearly all patents passing the Great Seal, except those for inventions, (Great Seal Act, 1880,) are made out in his office, and he makes out the warrants for almost all letters-patent under the Great Seal. (See PATENT.) He also does the duties formerly performed by the clerk of the Hanaper. They chiefly consisted in collecting fees, but have now ceased almost entirely. He is registrar of the Lord High Steward's Court. Second Rep. Legal Dep. Comm. 39; Rep. Comm. on Fees, § 2 and 3 Will. IV. c. 3; 3 and 4 Will. IV. c. 84; 15 and 16 Vict. c. 87; 37 and 38 Vict. c. 81.

CROWN OFFICE IN THE QUEEN'S BENCH.—The office in which all the business of the English Queen's Bench Division, in respect of its prerogative and criminal jurisdiction, was transacted. (Second Rep. Legal Dep. Comm. 15.) It has now been transferred, together with its principal officer, the queen's coroner (*q. v.*), to the central office (*q. v.*)

CROWN PAPER.—A paper containing the list of criminal cases which await the hearing or decision of the court, and particularly of the Court of Queen's Bench; and it then includes all cases arising from informations *quo warranto*, criminal informations, criminal cases brought up from inferior courts by writ of *certiorari*, and cases from the sessions.—*Brown*.

CROWN SOLICITOR.—In England, the solicitor to the treasury acts, in State prosecutions, as solicitor for the crown in preparing the prosecution. In Ireland there are officers called "crown solicitors" attached to each circuit, whose duty it is to get up every case for the crown in criminal prosecutions. They are paid by salaries. There is no such system in England, where prosecutions are conducted by solicitors appointed by the parish, or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a crown prosecutor (called the "procurator-fiscal," and being a subordinate of the lord-advocate) in every county, who prepares every criminal prosecution.—*Wharton*.

CROY.—Marsh land.—*Blount*.

CROYSES.—Pilgrims, because they wore the sign of the cross (*cruce signati*) upon their garments. Bract. l. 5, pt. 2, c. ii.

CRUCIS JUDICIUM.—The judgment (trial) of the cross. An ancient mode of trial in criminal cases.—*Spel. Gloss.*

CRUEL AND INHUMAN TREATMENT, (as ground for divorce). 60 How. (N. Y.) Pr. 152; 73 N. Y. 369, 374; 4 Wis. 135; 50 *Id.* 254.

CRUEL PUNISHMENT, (in constitution of U. S.). 3 Cow. (N. Y.) 686, 701.

CRUELLY BEAT, (an animal). 101 Mass. 34.

CRUELTY.—

§ 1. In the law of divorce, cruelty may be said generally to be where the husband has so treated his wife and manifested such feelings towards her as to have inflicted bodily injury, to have caused reasonable apprehension of bodily suffering, or to have injured health. (*Tomkins v. Tomkins*, 1 Sw. & Tr. 168; *Brown D. & M.* 30.) Acts of cruelty to children, committed in the presence of the mother, are sometimes called "constructive cruelty to her." *Brown D. & M.* 30.

§ 2. Cruelty by the wife towards the husband generally requires to be of an aggravated character in order to give him a right to a judicial separation. *Id.* 40. *See* DISSOLUTION OF MARRIAGE; DIVORCE; JUDICIAL SEPARATION.

§ 3. To children.—In some of the States laws have recently been enacted specifically to prevent cruelty to children; chiefly, however, by promoting the organization of societies to watch the welfare of that class of children who are peculiarly open or subject to abuse, rather than by introducing any new views as to what constitutes cruelty. The abuses which existing statutes characterize as misdemeanors are thus, in effect, brought into the category of acts of cruelty to children. Acts of this description are the employment of children as acrobats or beggars, the seduction or abduction of children, harsh treatment of apprentices, &c.—*Abbott.*

§ 4. To animals.—Cruelty to animals is punishable, in England, by fine or imprisonment under the Stats. 7 and 8 Vict. c. 87, 12 and 13 Vict. c. 92, and 17 and 18 Vict. c. 60; these acts also provide for animals in pounds being supplied with food and water. The Cruelty to Animals Act, 1876, deals with the subject of vivisection. In America, societies now exist in nearly all the States whose object is the prevention of cruelty to animals, the

parent society being that of New York. These societies are chartered and invested with special powers, including that of arresting offenders against the statutes passed for the protection of dumb animals.

CRUELTY, (to animals). 4 Cranch C. C. (U. S.) 483; 7 Allen (Mass.) 579, 582; 101 Mass. 34; 44 N. H. 392; 15 Abb. (N. Y.) Pr. n. s. 51; 6 N. Y. City H. Rec. 62; 1 Aik. (Vt.) 226; 3 Best & S. 382; 3 Campb. 140.

— (in divorce act). 16 Ill. 85; 57 Ind. 568; 18 Kan. 419.

— (when ground for divorce). 19 Ala. 307; 31 Ga. 625; 36 *Id.* 286; 3 Dana (Ky.) 28; 4 La. Ann. 137; 4 Mass. 587; 1 Green (N. J.) 459; 3 Stock. (N. J.) 195; 1 Edw. (N. Y.) 278; 2 Paige (N. Y.) 501-2; 4 Desaus. (S. C.) 167; 14 Tex. 356; 4 Wheel. Am. C. L. 520; 1 Hagg. Cons. 35; 1 Hagg. Ec. 733, 768 n.

— (what not ground for divorce). 9 C. E. Gr. (N. J.) 338; 1 Barb. (N. Y.) Ch. 516; 3 Paige (N. Y.) 267, 272; 37 Pa. St. 225; 2 Sneed (Tenn.) 716; 4 Wis. 135; 1 Hagg. Cons. 35; 1 Hagg. Ec. 773 n.

CRUELTY, EXTREME (in divorce case). 88 Ill. 250.

CRUISE.—A voyage by an armed vessel, either as a convoy (*q. v.*) or for the purpose of making captures in time of war.

CRUISE OF THREE MONTHS, (may have a continuance). 2 Gall. (U. S.) 526.

CRY DE PAIS, or CRI DE PAIS.—The hue and cry raised by the people in ancient times, where a felony had been committed and the constable was absent.

CRYER.—(1) An auctioneer (*q. v.*) (2) An officer of a court, whose duty it is to make proclamation. *See* CRIER.

CRYPTA.—A chapel or oratory underground, or under a church or cathedral.—*Du Cange.*

CUCKING STOOL.—A chair on which females for certain offences were fastened and ducked in a pond. "The chair was sometimes in the form of a close-stool, which contributed to increase the degradation."—*Halliwell.* It was also called *goging-stool*. *Goughstole*, Anglo-Saxon, a close-stool.—*Wedgw.* "A common scold, *communis rixatrix* (for our Law-Latin confines it to the feminine gender), is a public nuisance to her neighborhood; for which offence she may be indicted, and if convicted, shall be sentenced to be placed on a certain engine of correction, called the trebucket, castigatory or cucking-stool." 4 Bl. Com. 168.

CUI ANTE DIVORTIUM.—An action by which a divorced woman could recover her lands if they had been aliened during the coverture by her husband, "*cui ante divortium ipsa contradicere non potuit.*" (Co. Litt. 326 a.) If she died before bringing the action, her heir

could bring an action called a *sur cui ante divortium*. They were both abolished by Stat. 3 and 4 Will. IV. c. 27, § 36.

CUI BONO.—For whose good, or benefit. See 10 Mod. 135.

CUI IN VITA.—An action by which a widow could recover her lands if they had been aliened during the coverture by her husband, "*cui in vitâ sud ipsa contradicere non potuit*." If she died before bringing the action her heir had an action called "*sur cui in vitâ*." (Litt. § 594; 3 Bl. Com. 183, n.) They were both abolished by Stat. 3 and 4 Will. IV. c. 27, § 36. See DISCONTINUANCE.

Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest (Dig. 2, 1, 2): To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised.

Cui jus est donandi, eidem et vendendi et concedendi jus est (Dig. 50, 17, 163): He who has the right of giving has also the right of selling and granting.

Cui licet quod majus (or magnus) non debet quod minus est non licere (4 Co. 23): He who has authority to do the more important act shall not be debarred from doing that of less importance.

Cuicunque aliquis quid concedit concedere videtur et id, sine quo res ipsa esse non potuit (11 Co. 52): Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect.

Cuilibet in sua arte perito est credendum: Each one skilled in his own art is to be believed. Thus, medical men and other skilled witnesses may give their opinion in evidence as to the state or condition of a patient, or thing at any particular time.

Cuilibet licet juri pro se introducto renunciare: Any one may waive or renounce the benefit of a principle or rule of law that exists only for his protection; e. g. an ambassador may waive his extra-territoriality or exemption from the jurisdiction of the local courts, a witness may waive his privilege, and generally a party may waive any relief to which he is entitled when successful in an action, e. g. his right to costs out of the other or defeated party.

CUJACIUS.—Jacobus Cujacius (Cujas) was born at Toulouse in 1522, studied there under Ferrier, taught law from 1547, principally at Bourges, Turin and Paris, until his death at Bourges on 4th October, 1590. His principal works are notes and commentaries on the different portions of the *Corpus Juris Civilis*, on the *Basilica*, and on the *Decretals*; and the *Usus Feudorum*. Collections of his works have been published at Paris, Naples, and other places. Holtz. Encycl. s. v.

Cujus est commodum ejus debet esse incommodum: Whose is the advantage, his also should be the disadvantage.

Cujus est dare, ejus est disponere (Wing. Max. 53): Whose it is to give, his it is to dispose; or, as Broom says, "The bestower of a gift has a right to regulate its disposal." This rule is a general one, and is considerably curtailed and qualified at the present time, especially so by the acts which restrict and regulate the tying up of real estate, and accumulation of personal property beyond specified periods.

Cujus est divisio alterius est electio (Co. Litt. 166): When one has the division, the other has the choice.

Cujus est instituere ejus est abrogare (Broom Max. (5 edit.) 878, n.): He that institutes may also abrogate.

Cujus est solum ejus est usque ad cœlum et ad inferos (Co. Litt. 4): Whose is the soil, his it is even to heaven and to the middle of the earth. Thus, upon a conveyance of land, *simpliciter*, buildings and timber being thereon will also pass, as also the mines thereunder, "*donec probetur in contrarium*" (i. e. until the contrary is proved). Property, however, must be so used and enjoyed as not to injure or prejudice the rights of adjoining owners, as by overhanging buildings.

Cujus juris (i. e. jurisdictionis) est principale, ejusdem juris erit accessorium (2 Inst. 493): An accessory matter is subject to the same jurisdiction as its principal.

Cujus per errorem dati repetitio est, ejus consulto dati donatio est (Dig. 50, 17, 53): He who gives a thing by mistake, has a right to recover it back; but if he gives designedly, it is a gift.

Cujusque rei potissima pars est principium (Dig. 1, 2, 1; 10 Co. 49a): The chiefest part of everything is the beginning.

CUL DE SAC.—A street one end of which is shut up by another street running at an angle with it, i. e. across it, so that access to the houses can only be obtained from the other end of the street.

CULAGIUM.—The laying up of a ship in a dock for repair.—Blount; Cowell.

CULPA.—An act of neglect, causing damage, but not implying an intent to injure, of which the Roman jurists recognized two: (1) *Culpa lata, culpa latior, magna culpa*, gross neglect treated very much like fraud; *culpa magna doli est, dolo proxima*. (2) *Culpa*, without any epithet, or *omnis culpa, culpa levis, levior*; or *levissima*, slight neglect. (Cum. Civ. L. 279; Sand. Just. (5 edit.) 318.)—Wharton.

Culpa caret qui scit, sed prohibere non potest (Dig. 50, 17, 50): He is free from fault who knows but cannot prevent.

Culpa est immiscere se rei ad se non pertinenti (2 Inst. 208): It is a fault for any one to meddle in a matter not pertaining to him.

Culpa lata dolo æquiparatur: Gross negligence is held equivalent to intentional wrong.

Culpa tenet suos auctores: A fault binds its own authors.

CULFABLE, (defined). 8 Allen (Mass.) 122.

CULFABLE HOMICIDE, (defined). Arkl. 72.

CULFABLE NEGLIGENCE, (in bringing a suit). 8 Allen (Mass.) 122; 103 Mass. 287.

CULFABLE NEGLIGENCE, (defined). 49 N. H. 387, 392.

CULFABLE OMISSION, (defined). 8 Allen (Mass.) 121.

Culpæ pœna par esto. Pœna ad mensuram delicti statuenda est (Jur. Civ.): Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offence.

CULPRIT.—Besides its popular sense of a prisoner accused of some crimes, the word "culprit" used formerly to be made use of in the following manner: When a prisoner had pleaded not guilty, *non culpabilis*, or *nient culpable*, which used to be abbreviated upon the minutes thus, "*non* (or *nient*) *cul*," the clerk of the assize, or clerk of the arraigns, on behalf of the crown, replied that the prisoner is guilty, and that he was ready to prove him so. This was done by two monosyllables, in the same spirit of abbreviation, "*cul prît*," which signifies, first, that the prisoner was guilty (*cul*, *culpable*, or *culpabilis*), and then that the king was ready to prove him so, *prît præsto sum*, or *paratus verificare*; for, apparently, the crown assumes (and of necessity) that the accused is guilty, although the common law, for his protection, assumes that he is innocent, until his guilt is established by strict evidence.—*Brown*.

CULTIVATED AND IMPROVED LAND, (in a statute). 4 Cow. (N. Y.) 190, 203.

CULTIVATED FIELD, (in a statute). 81 N. C. 585.

— (what is). 13 Ired. (N. C.) L. 36.

CULTIVATION, IN A STATE OF, (defined). 2 N. H. 56.

CULTURA.—A parcel of arable land.—*Blount*.

CULVERT, (what is a). 3 Ad. & E. 69, 70.

CULVERTAGE.—Base slavery; the confiscation of an estate. Mat. Par. 1212.

Cum adsunt testimonia rerum quid opus est verbis (2 Buls. 53): Where the testimony of facts is present, what need is there of words?

Cum confitente sponte mitius est agendum (4 Inst. 66): One confessing willingly should be dealt with more leniently.

Cum de lucro duorum quæritur, melior est causa possidentis (Dig. 50, 17, 126): When the question is as to the gain of two persons, the cause of him who is in possession is the better.

Cum duo inter se pugnancia reperiuntur in testamento ultimum ratum est (Co. Litt. 112): Where two repugnant clauses (or statements) occur in a will, the latter shall prevail. It will be remembered, however, that the intention must in all cases be looked to, and, if possible, carried out, and the above maxim is a rule only inasmuch as its application generally will do this.

Cum duo jura concurrunt in una persona æquum est ac si essent in duobus: When two rights meet in one person, it is the same as if they were in two persons.

Cum grano salis: With allowance for exaggeration.

Cum in testamento ambigue aut etiam perperam scriptum est benigne interpretari et secundum id quod credibile est cogitatum credendum est (Dig. 34, 5, 24): Where an ambiguous, or even an erroneous, expression occurs in a will, it should be construed liberally and in accordance with the testator's probable meaning.

CUM ONERE.—With the burden, *i. e.* subject to the charge or incumbrance. Thus, a purchaser who has knowledge or notice of a charge or incumbrance is said to take the property *cum onere*.

Cum par delictum est duorum, semper oneratur petitor et melior habetur possessoris causa (Dig. 50, 17, 154): When both parties are in fault the plaintiff must always fail, and the cause of the person in possession be preferred.

CUM PRIVILEGIO.—The expression of the monopoly of Oxford, Cambridge, and the royal printers to publish the Bible.

Cum quod ago non valet ut ago, valeat quantum valere potest (4 Kent Com. 493): When that which I do is of no effect as I do it, it shall have as much effect as it can; *i. e.* in some other way.

CUM TESTAMENTO ANNEXO.—See ADMINISTRATION, § 3; LETTERS OF ADMINISTRATION.

CUMULATIVE signifies that two things are to be added together or taken one after another, instead of one being a repetition or in substitution of the other. Thus, where a testator gives two legacies of unequal amount to the same person, even by the same testamentary instrument, they are in general cumulative, *i. e.* the legatee takes both. (Wats. Comp. Eq. 1239; Wms. Ex. 1196.) So when two statutes provide different remedies, penalties or punishments for the same act or offence,

it is a question of construction whether they were intended to be cumulative or whether it was intended that only one could be exercised or imposed in a given case.

CUMULATIVE EVIDENCE.—

Evidence which tends to prove a fact already proved by other evidence. The discovery of cumulative evidence after verdict is not, as a general rule, a ground for a new trial because of "newly discovered evidence" (*q. v.*)

CUMULATIVE EVIDENCE, (defined). 37 Ga. 459; 43 Iowa 175; 65 Me. 126; 43 Barb. (N. Y.) 203; 10 Wend. (N. Y.) 286, 294.

— (what is). 20 Conn. 305; 34 Ga. 565; 28 Me. 379; 24 Pick. (Mass.) 246; 7 Barb. (N. Y.) 271, 278; 1 Sandf. (N. Y.) 195; 10 Wend. (N. Y.) 286.

— (what is not). 43 Barb. (N. Y.) 203.

CUMULATIVE LEGACY.—

See CUMULATIVE.

CUMULATIVE REMEDY.—

A second, or additional mode of procedure in addition to one already available, as opposed to alternative remedy.—*Wharton*.

CUMULATIVE TESTIMONY, (defined). 7 Wheel. Am. C. L. 133.

CUNEATOR.—A coiner.

CUNEUS.—A mint or place in which money was coined. This is the word from which "coin" (*q. v.*) is derived.

CURAGULOS.—One who takes care of a thing.

CURA ANIMARUM.—The care of souls. See CHAPEL, § 2 (5); SINECURE.

CURATE.—In England, a temporary or stipendiary curate is a clerk in holy orders who assists a rector or vicar, and is paid by him. In some cases the bishop may appoint an incumbent to employ a curate. (2 Steph. Com. 696; Stat. 1 and 2 Vict. c. 106. See NON-RESIDENCE.) A perpetual curate officiates in a parish or district to which he is nominated by an impropriator or lay rector. (Phillim. Ecc. L. 299.) A curate of the latter class seems now to be properly called a "vicar." Stat. 31 and 32 Vict. 117; 2 Steph. Com. 682. See, also, CHAPEL, § 2 (5).

CURATIO.—In the civil law, the office of a curator (*q. v.*) or guardian (*q. v.*)

CURATOR.—

§ 1. In the civil law, a guardian; one appointed to take charge of the person and property of an infant, idiot, deaf mute, lunatic,

spendthrift, &c. The term is in common use in Louisiana, and in that State includes also a person appointed to care for the estate of an absentee. See La. Civ. Code, *passim*.

§ 2. In English law, curator sometimes means the same thing as guardian. Thus, in probate practice the guardian appointed to take out letters of administration, *durante minore etate*, is sometimes called a "curator," and in divorce practice a curator *ad litem* is the same thing as a guardian *ad litem*. Browne Div. 23. See GUARDIAN.

§ 3. Felon's estate.—By the act to abolish forfeiture for treason and felony, (33 and 34 Vict. c. 23, §§ 21 *et seq.*) where a person has been convicted of treason or felony, and no administrator of his property has been appointed, an *interim curator* of the property may be appointed by the justices of the peace of the district where the convict last resided. The *interim curator* has powers similar to those of an administrator (*q. v.*), but can only exercise some of them with the sanction of the justices or a court.

CURATOR AD HOC.—A curator for a special purpose; a special guardian.

CURATOR AD LITEM.—A guardian *ad litem* (*q. v.*)

CURATOR BONIS.—A guardian to take care of property.—*Calv. Lex.* A guardian of infants.—*Bell Dict.*

CURATORES VIARUM.—Surveyors of the highways.

CURATORSHIP.—The office of a curator, or guardian.

CURATRIX.—A woman who has been appointed to the office of curator; a female guardian.

Curatus non habet titulum (3 Buls. 310): A curate has not a title.

CURBY HOCK, (not an unsoundness). Oliph. Hors. 82.

CURE.—See AID, § 2.

CURE OF SOULS.—The spiritual charge of a parish; the ordinary duties of an officiating clergyman. See SINECURE.

CURFEW.—A bell which rang at eight o'clock in the evening, in the time of William the Conqueror, whereupon every one was obliged by law to put out his fire and light. The law was abolished by Henry I., in 1100. It was called, in the Law-Latin of the middle ages, *ignitegium* or *pyritegium*.—*Wharton*.

CURIA.—A court of justice. Also the class from which, in the Roman provincial towns, the magistrates were eligible.

CURIA ADMIRALITATIS.—The Court of Admiralty.

CURIA ADVISARE VULT.—The court desires to consider. A deliberation which a court of judicature sometimes takes, where there is any point of difficulty, before they give judgment in a cause. Abbreviated in the reports thus, *cur. adv. vult.*, or *c. a. v.*

CURIA BARONUM.—A court-baron.

Curia Cancellariæ officina justitiæ (2 Inst. 552): The Court of Chancery is the workshop of justice.

CURIA CLAUDENDA.—An obsolete writ to compel another to make a fence or wall, which he was bound to make between his land and the plaintiff's.—*Reg. Orig.* 155.

CURIA COMITATUS.—The county court (*q. v.*)

CURIA CURSUS AQUÆ.—A court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the river Thames between Gravesend and Windsor, and also at Gravesend bridge, &c. 2 Geo. II. c. 26.

CURIA DOMINI.—The lord's house, hall, or court, where all the tenants meet at the time of keeping courts.—*Cowell.*

CURIA LEGITIME AFFIRMATA.—A phrase used in old Scotch records to show that the court was opened in due and lawful manner.

CURIA MAGNA.—The great court. One of the old names of the English parliament.

CURIA MAJORIS.—The mayor's court.

Curia palatii.—The palace court. Abolished by 12 and 13 Vict. c. 101.

Curia parliamenti suis propriis legibus substitit (4 Inst. 50): The court of parliament is governed by its own peculiar laws.

CURIA PENTICIARUM.—A court held by the sheriff of Chester, in a place there called the *Pendice* or *Pen'ice*; probably it was so called from being originally held under a pent-house, or open shed covered with boards.—*Blount.*

CURIA PERSONÆ.—A parsonage.—*Cowell.*

CURIA PEDIS PULVERIZATI.—The Court of Piepowdre or Piepowders (*q. v.*)

CURIA REGIS.—See *AULA REGIA.*

CURIAE CHRISTIANITATIS.—Courts of Christianity; ecclesiastical courts.

CURIALITY.—The privileges, prerogatives, or, perhaps, retinue of a court.—*Bacon.*

Curiosa et captiosa interpretatio in lege reprobatur (1 Bula. 6): A nice and captious construction is reprobated in law.

CURNOCK.—A measure containing four bushels, or half a quarter.

CURRENCY.—Coin; bank notes, or other paper money issued by authority, and which are continually passing as and for coin.

CURRENCY, (defined). 30 Ill. 399; 32 *Id.* 74; 11 Mich. 501; 14 *Id.* 379; 37 Barb. (N. Y.) 62; 40 *Id.* 245; 24 N. Y. 548; Phil. (N. C.) L. 26.

— (distinguished from "money," and "current money"). 4 Mon. (Ky.) 547; 2 Duv. (Ky.) 33.

— (when means "coin"). 9 Mo. 688.

— (a bill of exchange payable in). 1 Bouv. Inst. 458.

— (a certificate payable in). 14 Mich. 374.

— (in certificate of deposit). 32 Ill. 74; 35 *Id.* 158; 47 Wis. 551.

— (in a contract). 1 Ohio 115, 119.

— (note payable in). 29 Iowa 501; 4 Am. Rep. 244; 5 Cow. (N. Y.) 186; 1 Heisk. (Tenn.) 385.

CURRENT ACCOUNTS, (defined). Coxe (N. J.) 196.

— (what are not). 5 Johns. (N. Y.) Ch. 522-524.

— (under statute of limitations). 5 Cranch (U. S.) 15.

CURRENT BANK MONEY, (promissory note payable in). 5 Humph. (Tenn.) 140.

CURRENT BANK NOTES, (defined). 7 Ark. 282-293.

— (what regarded as). 1 Ohio. 189.

— (in a check). 2 Hill (N. Y.) 425.

— (promissory note payable in). 1 Ohio 178, 531; 1 Tex. 246; 2 Wheel. Am. C. L. 179.

— (of New York, distinguished from others). 19 Johns. (N. Y.) 146.

CURRENT FUNDS, (in a check, or draft). 28 Ill. 332, 388; 30 *Id.* 399; 34 *Id.* 286.

— (in a promissory note). 9 Ind. 135; 11 Mich. 501; 30 Tex. 37, 49.

CURRENT IN THE CITY OF NEW YORK, (a bill of exchange, payable in). 1 Bouv. Inst. 458.

CURRENT LAWFUL MONEY, (defined). 1 Dall. (U. S.) 175.

CURRENT MONEY, (defined). 2 J. J. Marsh. (Ky.) 464; 3 T. B. Monr. (Ky.) 166.

— (is actual currency). 4 J. J. Marsh. (Ky.) 225.

— (means "lawful money"). 1 Dall. (U. S.) 125.

— (in a bond). 1 Dall. (U. S.) 125, 126.

— (in a promissory note). 3 T. B. Monr. (Ky.) 166; 21 La. Ann. 624.

— (in note made in State in rebellion). 21 La. Ann. 624.

CURRENT MONEY OF VIRGINIA, (in a deed). 2 Cranch (U. S.) 10.

CURRENT NOTES OF NORTH CAROLINA, (defined). 64 N. C. 381.

CURRICULE, (policy on merchandise will cover). Anth. (N. Y.) 114.

CURRICULUM.—(1) The year; the course of a year; (2) the set of studies for a

particular period, appointed by a college or university.

Currit tempus contra desides et sui juris contemptores: Time runs against the slothful, and those who slight their own rights.

CURRIT QUATUOR PEDIBUS.—It runs upon four feet (or upon all fours.) See *ALL FOURS*.

CURSING.—See *BLASPHEMY*; *PROFANITY*.

CURSITORS.—Clerks in the Chancery office, whose duties consisted in drawing up those writs which were, of course, *de cursu*, whence their name. They were abolished by Stat. 5 and 6 Will. IV. c. 82. Spence Eq. 238; 4 Inst. 82.

CURSONES TERRÆ.—Ridges of land.—*Cowell*.

CURSOR.—An inferior officer of the papal court.

Cursus curiæ est lex curiæ (3 Bulst. 53): The practice of the court is the law of the court.

CURTESY.—

§ 1. Where a man marries a woman seised of land in fee-simple or fee-tail, and has by her issue born alive capable of inheriting the land as heir to her, notwithstanding the issue may afterwards die, yet if the husband survives the wife he shall hold the land during his life. "And he is called tenant by the curtesie of England, because this is used in no other realme but in England onely." (Litt. § 35; Co. Litt. 29a.) The Law-Latin phrase was *tenens per legem Angliæ*. It is said that this species of estate was not peculiar to England, and that the name is connected with *curia*. (Dig. Hist. R. P. 122.) In Scotland it was called *curialitas Scotiæ*. (Co. Litt. 30a.) If land is given to a woman and the heirs male of her body, and she marries and has issue, a daughter, and dies, the husband is not tenant by the curtesy, because the daughter by no possibility could inherit her mother's estate in the land. Co. Litt. 29b.

§ 2. In England, where a married woman is entitled to an equitable estate of inheritance to her separate use and does not dispose of it by deed or will, the husband is entitled to equitable curtesy. *Cooper v. Macdonald*, 7 Ch. D. 288.

§ 3. By the custom of gavelkind a man may be tenant by the curtesy without having any issue. Co. Litt. 30a.

§ 4. And by the special custom of some manors the widower of a deceased female copyholder is entitled to a customary curtesy. *Elt. Copyh.* 153. See *DOWER*; *FREEBENCH*.

CURTESY, (defined). 28 Barb. (N. Y.) 343, 345; 56 *Id.* 168.

CURTEYN.—The name of King Edward the Confessor's sword, which is the first sword carried before the English sovereigns at their coronation; and it is said that the point of it is broken as an emblem of mercy. *Mat. Par.* in *Hen. III.*

CURTILAGE.—A court yard adjoining a messuage, "*i. e.* a little garden, yard, field or piece of void ground, lying near and belonging to the messuage." (Shep. Touch. 94.) By the grant of a messuage in a deed the curtilage passes without being expressly mentioned. (Co. Litt. 5b; Wms. Real Prop. 13.) For the etymology of the word, see *COURT*.

CURTILAGE, (defined). 31 Me. 523; 10 Cush. (Mass.) 480; 2 Mich. 250; 10 Hun (N. Y.) 151, 154; 1 Chit. Gen. Pr. 175; Shep. Touch. 94.

—— (in statute). 61 Ala. 58.

—— (of a dwelling-house). 31 Me. 523.

—— (what is a part of). 2 Mich. 250.

—— (what is not within). 4 Johns. (N. Y.) 423.

CURTILES TERRÆ.—Court lands.—*Spel. Feuds*.

CURTILLIUM.—The area or space within the inclosure of a dwelling-house.—*Spel. Gloss*.

CURTIS.—A garden; a space about a house; a house, or manor; a court, or palace; a court of justice; a nobleman's residence.—*Spel. Gloss*.

CURVED LINE, (of a railroad). 113 Mass. 161.

CUSSORE.—A term used in Hindostan for the discount of allowance made in the exchange of rupees, in contradistinction to *batta*, which is the sum deducted.—*Encyc. Lond.*

CUSTA—CUSTAGIUM—CUSTANTIA.—Costs.

CUSTODE ADMITTENDO—CUSTODE AMOVENDO.—Writs for the admitting and removing of guardians.

CUSTODES.—Guardians; keepers; inspectors.

CUSTODES PACIS.—Guardians of the peace.

CUSTODES LIBERTATIS ANGLIÆ AUCTORITATE PARLIAMENTI.—The style in which writs and all

judicial processes were made out during the great revolution from the execution of King Charles I. till Oliver Cromwell was declared protector. 12 Car. II. c. 3.

CUSTODIA LEGIS.—In the custody of the law.

CUSTODIAM LEASE.—A grant from the crown under the Exchequer seal, by which the custody of lands, &c., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof.—*Wharton*.

CUSTODY.—In criminal law custody is the same thing as detention in civil law. Thus, where the owner of a movable thing gives it to his servant to keep until he wants it back, the servant is said to have the custody of it and the master retains the possession. (Steph. Crim. Dig. 196.) But if a thing is delivered by a stranger to a servant on behalf of his master, then the servant has the possession and not the mere custody of it. *Id.* 224. See **EMBEZZLEMENT**.

CUSTODY, (synonymous with "imprisonment"). 59 Pa. St. 320.

—— (what is a sufficient). 82 Pa. St. 306.

CUSTOM:—

§ 1. A custom is a rule of conduct which a given class of persons observe spontaneously or by tacit consent. (Bract. 2; Austin 104; Mark. El. L. § 67 *et seq.*) As to the relation between custom and law, *see, also*, Maine Anc. L. ch. 1; Mr. F. Pollock on Law and Command; Law Mag. April, 1872, and The History of the Word "Law," by Charles Sweet; Law Mag. June and July, 1874. It may now be taken that Austin's view of custom is incorrect, and that custom is a source of law in the strict sense of the term. (See Holl. Jur. 44 *et seq.*) Customs are of two classes, namely, those which form part of the law of the land, and those which operate by modifying contracts entered into by private persons.

§ 2. Customs which form part of the law of the land are commonly divided into three kinds, namely, general, local or particular, and personal.

§ 3. **General customs**, or customs of the realm (Cowp. 375), are the universal rule of the whole land, and form the common law in its stricter and more usual signification (1 Bl. Com 67); such are the

rules as to the inheritance of land, the solemnities and obligations of contracts, the liabilities of common carriers, &c., so far as they have not been altered by statute. This use of the word custom seems to be modern, for Bracton, Britton and Littleton use "custom" or "usage" in the sense of "particular custom," and say nothing about "general customs," but simply speak of the law of England. (Bract. 1a, 2a; Britt. 1a, 33b, 187b; Litt. § 170.) Coke also says that the laws of England are "divided into common law, statute law and custome," and "a custome cannot be alledged generally within the kingdome of England, for that is the common law" (Co. Litt. 110b); but elsewhere he distinguishes between general and particular customs. (*Id.* 115b; *see, also*, Finch Law 77; Noy Max. i. 17.) In truth it is misleading to describe the common law as consisting of customs: if it did, a rule hitherto unrecognized might be introduced on proof of its having been observed from time immemorial. In reality, of course, this is not so; for no rule of the common law can now be recognized unless a judicial precedent can be found for it.

§ 4. **Particular or local customs** are those which only affect land situate within particular districts; such are the customs of gavelkind and borough-English, which govern the descent of land in certain places; the customs which give the inhabitants of a certain place rights over land in the neighborhood (*see* **EASEMENT**; **RECREATION**); the custom of tin-bounding in Cornwall, and the customs relating to lands held by copyhold and customary freehold tenure. 1 Bl. Com. 74; Co. Litt. 110b; Noy's Dialogue 27.

§ 5. The customs of gavelkind and borough-English are judicially noticed in England; but to make any other particular custom good, it must be reasonable and must have been peaceably and continually observed from time immemorial; it is, of course, not necessary to prove that it has existed from time immemorial, for proof of its existence, for say twenty years, is often sufficient evidence of its immemorial existence. Litt. § 170; Co. Litt. 110b, 113b, 175b; 1 Bl. Com. 76; Broom Com. L. 12; Shelf. R. P. Stat. 31.

§ 6. **Personal.**—The principal, if not the only, custom having the force of law and affecting a particular class of persons,

is that known as the custom of merchants or law merchant, sometimes called the "general custom of merchants," to distinguish it from usages or customs of trade. (*Infra*, § 8.) It resembles the common law in following precedents, for "the custom of merchants, when established and settled by known decisions, is the general law of the kingdom, and therefore ought not to be left to a jury after it has been already settled by judicial determinations; but where it is doubtful it may be fit to ascertain from merchants the facts." (*Per* Lord Mansfield, *Edie v. East India Co.*, 2 Burr. p. 1226; 1 W. Bl. 298.) It has been said that where a usage among merchants is of recent date, it may be proved by evidence and then form part of the law merchant. (*Goodwin v. Robarts*, L. R. 10 Ex. p. 346.) This view, however, seems to involve a confusion between customs having the force of law and customs which modify contracts presumed to have been made with reference to them. In *Goodwin v. Robarts* the decision went on the ground of a usage having been established among bankers, and not on the ground of the existence of a custom having the force of law. (*See* S. C., 1 App. Cas. 476; Sm. Lead. Cas. 610; *Crouch v. Crédit Foncier*, L. R. 8 Q. B. p. 386; a learned note by the reporters in 8 C. B. p. 967.) The rules as to bills of exchange, checks and other negotiable securities, form an important part of the law merchant; a person who makes use of a mercantile instrument, such as a bill of exchange, becomes to that extent subject to the custom of merchants. 8 C. B. 967; 1 Bl. Com. 273.

§ 7. Customs which modify contracts entered into by private persons are those which have prevailed so long and so uniformly in transactions between persons engaged in a particular occupation, that when two of such persons enter into a contract relating to their occupation, and not containing anything inconsistent with the custom, they are presumed to have contracted with reference to it, and it then forms part of the contract so far as it is applicable.

Customs modifying contracts are generally divided into two classes.

§ 8. **Usage of trade.**—Usages or customs of trade are customs prevailing in a particular trade or business. Thus, if by the usage of bankers, stockbrokers, &c., bonds or scrip certificates of a certain kind are treated as negotiable, a person who has deposited them with a stockbroker cannot claim them from a *bona fide* holder for value, who has acquired them by delivery from the stockbroker. *Goodwin v. Robarts*, 10 Ex. 76, 337; 1 App. Cas. 476; *Gorgier v. Mievill*, 3 Barn. & C. 45.

§ 9. Such usages or customs may not only annex terms to a contract which is not inconsistent with them, but may also control the interpretation of a contract which is complete in itself but which contains terms used in a technical sense. *Broom Com.* L. 507.

§ 10. **Customs of the country** are customs relating to agriculture and the tenure of land for agricultural purposes, prevailing within a certain district. They are of two principal kinds: customs relating to and regulating the course of husbandry and the periods of taking farms, and customs which modify the rule of law that the land, together with everything that is in the soil or attached to it at the determination of a tenancy, belongs to the landlord and not to the tenant.

The leading English case on this subject is *Wigglesworth v. Dallison* (Doug. 201; 1 Sm. Lead. Cas. 598); there the defendant granted to the plaintiff a lease of a farm situate within a parish where there was an ancient and laudable custom for tenants of lands in certain cases to cut and take away, after the expiration of the lease, crops sown by them before the expiration of the term; the lease was silent on the question of away-going crops, and it was held that the custom formed part of the agreement between the parties, being supplemental to the lease. Customs of this kind also regulate the rights of outgoing and incoming tenants, which vary infinitely in different parts of the country. *Woodf. Land. & T.* 706 *et seq.* *See* TENANT RIGHT.

CUSTOM, (defined). 5 Barn. & Ald. 268, 279; 3 Halst. (N. J.) 125; 12 Pet. (U. S.) 445; 8 Wheel. Am. C. L. 229.

— (what is a good). 1 Bl. Com. 76; 1 Ex. D. 1, 4.

— (what is not). 1 Brod. & B. 224, 236.

CUSTOM HOUSE.—The house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or

receivable upon such importation or exportation are paid or received, and where ships are cleared out, &c.

CUSTOM HOUSE BROKERS.—

Persons authorized to act for parties at their option in the entry or clearance of ships, and the transaction of general business.

CUSTOM OF MERCHANTS.—See CUSTOM, § 6.

CUSTOM OF MERCHANTS, (in a declaration). 3 Mod. 227.

— (what is sufficient proof of). 4 Wend. (N. Y.) 483, 490; 8 *Id.* 109, 118.

— (what is not sufficient proof of). 2 Wend. (N. Y.) 501, 504.

CUSTOM OF THE COUNTRY, (in a lease). 4 East 154, 159, 161.

CUSTOMARY COURT BARON.—See COURT BARON.

CUSTOMARY DISPATCH, (in a charter-party relating to the discharge of a vessel). 10 Fed. Rep. 302.

CUSTOMARY ESTATES.—Estates which owe their origin and existence to the custom of the manor in which they are held. 2 Bl. Com. 149.

CUSTOMARY FREEHOLDS.—

§ 1. In the proper sense of the term customary freeholds are a privileged and superior kind of copyholds. The tenants of these lands hold by copy of court roll according to the custom of the manor, but they are not said to hold at the will of the lord. This tenure is found chiefly in the north of England, where it is not unfrequently known by the name of "tenant right" (*q. v.*) Wms. Seis. 49, citing *Duke of Portland v. Hill*, L. R. 2 Eq. 765; *Eardley v. Granville*, 3 Ch. D. 826.

§ 2. Sometimes the term is inaccurately applied to lands which are really freehold, but which are subject by custom to some peculiar and customary mode of alienation; as in the case of lands held of a certain manor in which there was a custom that every feoffment should be void unless it were presented at a manorial court within a certain time. Wms. Seis. 130, citing *Perryman's Case*, 5 Co. 84.

CUSTOMARY RIGHT, (what is not). 22 Wend. (N. Y.) 425, 431.

CUSTOMARY SERVICE.—Feudal services due by custom or prescription only.

CUSTOMARY TENANTS.—Tenants holding by custom of the manor.

CUSTOMS.—The duties or tolls payable upon merchandise exported from and imported into the country. (See EXCISE.)

They were originally on exports only, and on three commodities only, viz., wool, skins, and leather (the three staple commodities), and were called *custuma antiqua sive magna*, the merchant stranger paying half as much again as the English merchant, and the merchant stranger being liable besides to the *custuma parva et nova*, or alien's duty (as it was called).

CUSTOMS AND SERVICES annexed to the tenure of lands are those which the tenants thereof owe unto their lords, and which, if withheld, the lord might anciently have resorted to "a writ of customs and services" to compel them.—*Cowell*. But at the present day he would merely proceed to eject the tenant as upon a forfeiture, or claim damages for the subtraction.—*Brown*.

CUSTOMS OF LONDON.—These are particular customs relating to the government of the city of London, and also to trade, apprentices, widows, orphans, &c., within the city. They differ from all other customs in point of trial, for if the existence of the custom is brought in question it is not tried by a jury but by certificate from the lord mayor and aldermen by the mouth of their recorder, unless the corporation is itself interested in the alleged custom, *e. g.* in an alleged right of taking toll, &c., in which latter case the law does not permit them to certify on their own behalf.—*Brown*.

CUSTOS BREVIUM.—The keeper of the writs. A principal clerk belonging to the Courts of Queen's Bench and Common Pleas, whose office it was to keep all the writs returnable into those courts. Abolished by 1 Will. IV. c. 5.

CUSTOS MARIS.—The warden or guardian of the sea.—*Spel. Gloss.* Voc. *admiratus*.

CUSTOS MORUM.—The guardian of morals. The Court of Queen's Bench has been so styled. 4 Steph. Com. (7 edit.) 377.

CUSTOS PLACITORUM CORONÆ.—The keeper of the pleas of the crown. The *custos rotulorum* (*q. v.*)

CUSTOS ROTULORUM.—The first justice of the peace and first civil officer of the county for which he is appointed. As his name implies, he is nominally keeper of the rolls or records (writs, indictments, &c.) under the commission of the peace, but in practice they are kept by the clerk of the peace (*q. v.*) Pritch. Quar. Sess. 34; 4 Bl. Com. 272.

CUSTOS SPIRITUALIUM.—He that exercises the spiritual jurisdiction of a diocese, during the vacancy of any see which, by the canon law, belongs to the dean and chapter, but, at present, in England, to the archbishop of the province by prescription.—*Encyc. Lond*

Custos statum hæredis in custodia existentis meliorem, non deteriore, facere potest (7 Co. 7): A guardian can make the estate of an existing heir under his guardianship better, not worse.

CUSTOS TEMPORALIIUM.—The person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer.—*Encyc. Lond.*

CUSTUMA ANTIQUA SIVE MAGNA.—The old export duties on wool, sheepskins or woolfels, and leather.

CUSTUMA PARVA ET NOVA.—The alien's duty on imported and exported commodities.

CUT, (in the sense of wound, defined). 3 La. Ann. 512.

CUT GLASS, (in customs law). 12 How. (U. S.) 9, 20.

CUTHRED.—A knowing or skillful counsellor.

CUTTING, (in criminal statute). 1 Russ. & Ry. C. C. 104.

CUTPURSE.—One who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom.

CUTTER OF THE TALLIES.—An officer in the Exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, &c.

CYCLE.—A measure of time; a space in which the same revolutions begin again; a periodical space of time.—*Encyc. Lond.*

CYDER, (defined). 5 Barn. & C. 628, 636; 8 Dowl. & Ry. 403, 413.

CYNE-BOT, or CYNE-GILD.—The portion belonging to the nation of the mulct for slaying the king, the other portion or *wér* being due to his family.—*Blount*.

CYPHONISM.—A punishment used by the ancients, which some suppose to have been the smearing of the body with honey, and exposing the person to flies, wasps, &c. But the author of the notes on Hesychius says, under the word *ζύφων*, that it is derived from the word *ζύπτω*, to bend or stoop, and signifies

that kind of punishment still used by the Chinese, called by Sir George Staunton "the wooden collar," by which the neck of the malefactor is bent or weighed down.—(*Encyc. Lond.*; *Wharton*).

CY-PRÈS.—Evidently from the French *ci* or *cy*, "this" or "here," and *près*, "near," although the phrase does not seem to occur in French.

§ 1. Where a person has expressed a general intention and also a particular mode in which he wishes it carried out, but the intention cannot be carried out in that particular mode, the court before whom the matter comes will in certain cases direct the intention to be carried out *cy-près*, *i. e.* as nearly as possible in the mode desired.

§ 2. Thus, if a testator shows an intention that part of his property should be devoted to charitable purposes, but he either does not effectually indicate the particular manner in which he wishes it applied, or indicates a mode of application which is or subsequently becomes impracticable, the court will execute the trust *cy-près*, by applying the property to charitable purposes similar to those (if any) mentioned by the testator. (Wats. Comp. Eq. 43; Tud. Char. Trusts 259. See SCHEME.) So where an executory trust, if carried literally into effect, would be void for illegality, as where it would infringe the rule against perpetuities, the court, in order to carry the testator's intention into effect as far as possible, or, as it is termed, *cy-près*, will direct a settlement to be made as strictly as the law permits. 1 White & T. Lead. Cas. 33.

CY-PRÈS, (defined). 13 Wend. (N. Y.) 437, 445.

— (doctrine of, applied). 14 Wend. (N. Y.) 265, 308, 367, 372, 392.

CYRCE.—A church.

CYRICBRYCE.—A breaking into a church.—*Blount*.

CYROGRAPHUM.—An Anglo-Saxon charter. This word being written in capital letters at the top or bottom of the charter and cut through by a knife. 1 Reeves Hist. Eng. Law 10; Co. Litt. 229. See CHIROGRAPHUM.

D.

D.—The initial letter of *Digestum*, sometimes used as an abbreviation in citing the Digests, by civilians.

Da tua dum tua sunt, post mortem tunc tua non sunt (3 Buls. 18): Give the things which are yours whilst they are yours; after death they are not yours.

DACION.—A Spanish law term, signifying the actual delivery of the subject-matter of a contract.

DAGUS, or DAIS.—The raised floor at the upper end of a hall.

DAILY NEWSPAPER, (defined). 45 Cal. 30.

DAKER, or DIKER.—Ten hides.—*Blount*.

DALUS—DAILUS—DAILIA.—A certain measure of land: such narrow slips of pasture as are left between the ploughed furrows in arable land.—*Cowell*.

DAM.—A boundary or confinement of running water; a mole.

DAM, (defined). 4 C. E. Gr. (N. J.) 245.

— (what is not). 23 Mich. 93.

DAM, MILL, (in a declaration). 10 Mass. 58.

DAM THE WATER, (in a deed). 1 Rawle (Pa.) 218, 223.

DAMAGE is where one person has done a wrongful act for which the person injured may obtain compensation in an action.

§ 2. **Damage in law** or general damage is where no actual damage has been caused, but where the person whose right has been infringed brings an action to vindicate that right: thus, if A. enters on B.'s land without permission, B. may bring an action and recover nominal damages against A. for the trespass, though no actual injury to the land was caused, for repeated trespasses on the land might eventually give rise to an easement or right over the land. (Broom Com. L. 90, 860.) So A. may recover nominal damages against B. for a libel, although it caused A. no pecuniary loss. *Id.* 89.

§ 3. **Actual or special damage** is where the wrongful act has caused a loss or injury which can be assessed in money: as where A. negligently drives a carriage

so as to cause bodily injury to B., whereby B. is prevented from carrying on his business and put to medical expense; or where a slander injures a person in his business.

§ 4. "Special damage" is also used in the sense of extraordinary damage: as where a person suffers damage from a public wrong (*e. g.* a public nuisance), differing in kind from the damage suffered by the community in general. Broom Com. L. 657.

§ 5. **Consequential damage** is that which is either the natural result of the wrongful act, according to the usual course of things, or, in the case of a breach of contract, such damage as may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it. (Chit. Cont. 814. Consequential damage is sometimes called "special damage," as opposed to "general damage," which is the immediate result of the breach; Leake Cont. 564.) Thus, medical expenses incurred in consequence of an injury may be recovered (Underh. Torts 59); again, in an action for the breach of a warranty of a chain cable, it was held that the plaintiff might recover the value of the anchor to which the cable was attached, and which was lost by the breaking of the cable. *Borradaile v. Brunton*, 8 Taunt. 535; Chit. Cont. 816. See REMOTE.

DAMAGE, (in action of covenant). 4 Johns. (N. Y.) 1.

— (in statute giving admiralty jurisdiction). L. R. 6 Q. B. 729.

— (measure of). 9 Wend. (N. Y.) 129, 135; 17 *Id.* 71, 74, 543, 546; 21 *Id.* 144, 146, 342, 346, 457, 459; 22 *Id.* 348, 359.

— (rule of). 10 Wend. (N. Y.) 480, 486.

DAMAGE AND COMPENSATION, (distinguished and defined). 3 Pittsb. (Pa.) 504, 517.

DAMAGE-CLEER.—A fee assessed of the tenth part in the English Common Pleas, and the twentieth part in the Queen's Bench and Exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, &c., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, be-

fore he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks, for drawing special writs and pleadings; but it was taken away by statute, since which, if any officer in these courts took any money in the name of damage-cleer, or anything in lieu thereof, he forfeited treble the value. (17 Car. II. c. 6.)—*Wharton*.

DAMAGE-FEASANT.—See DISTRESS.

DAMAGE IN ONE'S PROPERTY, (in Me. Rev. Stat. 1841, ch. 25, § 89). 33 Me. 271.

DAMAGE TO GOODS, (in exception in bill of lading). L. R. 9 Q. B. 546.

DAMAGE, TO HIS, (in conclusion of a declaration). 6 Com. Dig. 93.

DAMAGE TO THE PERSON, (what includes). 106 Mass. 143, 145.

DAMAGED GOODS.—Goods, subject to duties, which have received some injury either in the voyage home, or while bonded in warehouse.—*Bouvier*.

DAMAGED OR LOST, (defined). 5 Barn. & Ald. 53, 56.

—— (in notice limiting common carrier's liability). 2 Barn. & Ald. 356.

DAMAGES.—NORMAN-FRENCH: *damages* (Britt. 245 b); from LATIN, *damnum*. Littré Dict. s. v. Dommage.

§ 1. **In general—Measure.**—A sum of money adjudged to be paid by one person to another as compensation for a loss sustained by the latter in consequence of an injury committed by the former. (Co. Litt. 257 a; Mayne Dam. 1.) The test by which the amount of the damages is ascertained is called the "measure of damages." Thus, where a vendor sues his vendee for breach of contract for the sale of goods, the measure of damages is the price of the goods if the property in them has passed to the vendee, or the difference between the contract price and the market price at the time of the breach if the vendor has re-sold the goods. (Broom Com. L. 631; Mayne Dam. 78. As to damages for breach of contract, see Chit. Cont. 807 *et seq.*; Leake Cont. 56 *et seq.* As to torts, see Broom 852 *et seq.* In some cases a measure of damages is fixed by statute, *e. g.* by the English Merchant Shipping Act, 1854, § 510.) As to when interest is payable as damages, see INTEREST.

§ 2. **Liquidated damages.**—When the parties to a contract agree that on a breach of its provisions, the one shall pay to the other a specified sum of money, the

question frequently arises whether that sum is merely a penalty (*q. v.*), or whether it is liquidated damages, *i. e.* a sum agreed to be paid on the breach in order to save the trouble and expense of ascertaining the damage actually sustained. The language in which the provision is expressed is immaterial if its true nature is apparent. Thus, where A. agreed to do certain services for B., for which B. agreed to pay him £3 6s. 8d. per day, and the contract stipulated that if either party should commit a breach of any part of it he should pay the other £1000 as "liquidated and ascertained damages, and not a penalty or penal sum," it was held that on a breach the plaintiff was only entitled to recover the damage actually sustained, and not £1000, because otherwise if B. had failed to make a single payment of £3 6s. 8d., A. would have become entitled to £1000 as damages. (*Kemble v. Farren*, 6 Bing. 141, cited Chit. Cont. 808; *Leake Cont.* 573.) On the other hand, where a lease stipulated that the lessee should pay £5 for every acre of meadow land which he should plough up, this was held to be liquidated damages and not a penalty. *Birch v. Stephenson*, 3 Taunt. 469, cited Chit. Cont. 810.

§ 3. **Nominal damages** are damages to such a small amount (*e. g.* six cents) as to show that they are not intended as any equivalent or satisfaction to the party recovering them. They are given when the plaintiff in an action for an invasion of his right establishes his right but does not show that he has sustained any damage. *Beaumont v. Greathead*, 2 Com. B. 494; *Leake Cont.* 567.

§ 4. **Exemplary, or vindictive damages** are damages given not merely as pecuniary compensation for the loss actually sustained by the plaintiff, but likewise as a kind of punishment to the defendant, with the view of preventing similar wrongs in future, as in actions for malicious injuries, fraud, seduction, oppression, continuing nuisances, &c. *Broom Com. L.* 855; 2 Sm. Lead. Cas. 549. See AGGRAVATION.

As to excessive damages, see NEW TRIAL. Also DOUBLE DAMAGES; INQUIRY; WRIT OF INQUIRY.

DAMAGES, (defined). 17 Wend. (N. Y.) 285, 293.

— (what is included). 49 N. H. 387, 392.

— (what is not included). 10 Metc. (Mass.) 1, 4.

— (for injuries to real estate). 2 Harr. (N. J.) 480.

— (how estimated). 7 Cow. (N. Y.) Pr. 681.

— (in a statute). 2 Wils. 91.

— (in action for dower). Coxe (N. J.) 125.

— (in action of covenant). 2 Wheat. (U. S.) 62, n. (c); 2 Harr. (N. J.) 304; 3 Cai. (N. Y.) 115; 5 Johns. (N. Y.) 49, 85; 13 Id. 50.

— (in dower act). 2 Gr. (N. J.) 125.

— (includes both debt and costs). Cro. Jac. 420.

— (includes costs). 9 East 298, 304; 1 T. R. 71.

— (liquidated, what are). 2 Dall. (U. S.) 252; 8 Mass. 223, 226; 5 Cow. (N. Y.) 151; 7 Id. 307; 3 Johns. (N. Y.) Cas. 297; 2 Wheel. Am. C. L. 450; 4 Id. 80, 119.

— (liquidated, what are not). 4 Dall. (U. S.) 149; 7 Wheat. (U. S.) 13; 11 Mass. 76, 83; 1 Pick. (Mass.) 443, 451.

— (measure of). 1 Baldw. (U. S.) 138; 3 Cranch (U. S.) 293; 4 Dall. (U. S.) 441; 6 Conn. 509, 520; 3 Day (Conn.) 447, 450; 6 T. B. Monr. (Ky.) 286, 291; 2 Mass. 434, 440; 3 Id. 523, 546; 5 Id. 435, 437; 4 Pick. (Mass.) 466, 467; 7 Id. 181, 187; 9 Id. 156, 161; 2 Wend. (N. Y.) 399, 405; 5 Id. 393, 395; 9 Id. 325, 326; 12 Id. 131, 134; 13 Id. 518, 523, 601, 603; 14 Id. 38, 40; 2 Murph. (N. C.) 347; 3 Watts (Pa.) 333, 334; 4 Id. 357, 418, 420; 5 Id. 516, 517; 6 Id. 304, 308; 3 Wheel. Am. C. L. 422; 4 Id. 75; 7 Id. 446; 8 Id. 226, 354, 531.

— (not a debt until liquidated). 3 Harr. (N. J.) 288.

— (of owner of lands taken for railroad). 4 Paige (N. Y.) 553.

— (release of). 7 Mass. 95.

— (rule of). 10 Wend. (N. Y.) 167, 179.

— (unliquidated, not subject of set-off). 1 Halst. (N. J.) 394.

DAMAGES, ACTUAL, (defined). 1 Gall. (U. S.) 478, 482.

— (in patent laws). 1 Baldw. (U. S.) 303, 325.

DAMAGES AND COSTS, (in a bond). 15 Mass. 67.

— (in a declaration). 9 Cow. (N. Y.) 26; 16 Johns. (N. Y.) 141; 8 Wend. (N. Y.) 538.

DAMAGES AND PROFITS, (in the patent act, not convertible terms). 9 Off. Gaz. Pat. 497.

DAMAGES, COSTS AND EXPENSES, (in a covenant of indemnity). 12 N. Y. 277.

DAMAGES, EXCESSIVE, (when verdict set aside for). South. (N. J.) 338, 847.

DAMAGES, LIQUIDATED, (in an agreement). 13 Wend. (N. Y.) 587, 590; 17 Id. 447, 459; 22 Id. 201, 211; 1 Bing 302, 306; 6 Id. 141, 147; 2 Bos. & P. 346, 350; 3 Car. & P. 240, 242; 8 J. B. Moo. 244.

DAMAGES ULTRA.—Additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

DAMAGING A VESSEL, (in a statute). 4 Car. & P. 559.

DAME.—The legal title of the wife or widow of a knight or baronet.

DAMNA.—In old English law, damages, with or without costs.

DAMNATUS.—Prohibited; unlawful. Thus, *damnatus coitus*, an unlawful connection.

DAMNI INJURIAE ACTIO.—An action given by the civil law for the damage done by one who intentionally injured the slave or beast of another.—*Calv. Lex*.

DAMNIFICATION.—That which causes damage or loss.

DAMNIFICATUS NON, (not pleadable to a multifarious condition). 3 Halst. (N. J.) 1.

DAMNIFY.—To cause damage or injurious loss to a person.

DAMNOSA HÆREDITAS.—A disadvantageous, or unprofitable inheritance; a term sometimes applied to the estate of a bankrupt. 7 East 335, 342.

DAMNUM.—Damage; loss. Used principally in such locutions as—

DAMNUM ABSQUE INJURIA.—A loss which does not give rise to an action of damages against the person causing it. As where a person blocks up the windows of a new house overlooking his land, or injures a person's trade by setting up an establishment of the same kind in the neighborhood. Broom Com. L. 75.

DAMNUM FATALE.—Fatal damage, for which bailees are not liable. Among fatal damages were included by the civilians losses by shipwreck, by lightning, or by other casualty, by pirates, and by superior force. Losses by fire, burglary, and robbery, seem also to have been included. But theft was not numbered among such casualties. Story Bailm. 471.

DAMNUM FATALE, (what includes). 8 Blackf. (Ind.) 535, 536.

DAMNUM INFECTUM.—In Roman law, damage not yet committed, but threatened or impending. A preventive interdict might be obtained to prevent such damage from happening; and it was treated as a *quasi-delict*, because of the imminence of the danger.

DAMNUM REI AMISSÆ.—A loss arising from a payment made by a party in consequence of an error of law.

DAN.—Anciently the better sort of men in England had this title; so the Spanish *Don*. The old term of honor for men, as we now say Master or Mister.—*Wharton*.

DANEGETL, DANEGETLD, or DANEGOLD.—A tribute of 1s., and afterwards of 2s., upon every hide of land through the realm, levied by the Anglo-Saxons, for maintaining such a number of forces as were thought sufficient to clear the British seas of Danish pirates, who greatly annoyed the coasts. It continued a tax until the time of Stephen, and was one of the rights of the crown.—*Wharton*.

DANELAGE.—The Danish Law, which was principally maintained in the midland counties, and also on the eastern coast (the parts most exposed to the visits of that piratical people) while the Danes had sway in England.—*Wharton*.

DANGER, (synonymous with "peril"). 8 Serg. & R. (Pa.) 533, 539.

DANGER OF THE SEAS, (in a bill of lading). 6 Am. L. Reg. 504.

DANGERIA.—A money payment, made by forest-tenants, that they might have liberty to plough and sow in time of pannage, or mast feeding.—*Manw.*

DANGEROUS, (in a covenant). 50 Barb. (N. Y.) 135; 45 N. Y. 499.

DANGEROUS GOODS.—Under the Carriage and Deposit of Dangerous Goods Act, 1866 (29 and 30 Vict. c. 69), it is required that all goods of a dangerous character (petroleum, nitro-glycerine, and the like), delivered to any warehouseman or carrier, or sent by any railway or ship, shall be distinctly marked "dangerous," and also notified as such to the warehouseman or carrier, subject to fine (£500) or imprisonment (two years), and subject also to forfeiture of the goods. And by the Petroleum Act, 1871 (34 and 35 Vict. c. 105), numerous very special provisions are made for the carriage of petroleum (as defined in section 3 of the act), and for the storage of same; and a search-warrant may be granted by any court of summary jurisdiction upon a sworn information of reasonable suspicion that petroleum is being carried or stored contrary to the act. The Tramways Act, 1870 (33 and 34 Vict. c. 75), section 53, provides similar (but additional) regulations for the carriage of dangerous goods by tram. And with regard to the carriage thereof by ships, the Merchant Shipping Act, 1873 (36 and 37 Vict. c. 85), enacts a penalty of £100 for carrying dangerous goods (as defined by section 23), unless the same are marked on the outside, and notified as such; and the goods may be thrown overboard, or forfeited to the crown, for any violation of the act. See *Kay's Shipmasters*, 278-280.—*Brown*.

DANGEROUS WEAPON, (in an indictment). 23 Tex. 579.

— (what is). 1 Baldw. (U. S.) 78, 99; 2 Curt. (U. S.) 241, 243; 3 Wash. (U. S.) 440, 442; 119 Mass. 342, 347.

DANGERS OF THE LAKE, (in a contract). 7 Hill (N. Y.) 292; 19 Wend. (N. Y.) 329, 332.

DANGERS OF THE NAVIGATION, (in an agreement). 9 Watts (Pa.) 87, 89.

DANGERS OF THE RIVER, (in a bill of lading). 20 Miss. 599; 1 Murph. (N. C.) 417; 4 Ohio St. 362, 373; 8 Serg. & R. (Pa.) 533, 538; 5 Yerg. (Tenn.) 71; 2 Wheel. Am. C. L. 549

DANGERS OF THE SEA.—See PERILS OF THE SEA.

DANGERS OF THE SEA, (in a bill of lading). 3 Vr. (N. J.) 320.

— (in a bond). 2 Wash. (U. S.) 366.

DANGERS OF THE SEAS, (in a bill of lading). 4 Vr. (N. J.) 543; 52 Barb. (N. Y.) 489.

— (in a charter party). 2 Curt. (U. S.) 8.

— (in a contract). 6 Cow. (N. Y.) 266.

DANISM.—The act of lending money on usury.

DAPIFER.—A steward either of a king or lord.—*Spel. Gloss.*

DARE.—In the civil law, to transfer property. When this transfer is made in order to discharge a debt, it is *datio solvendi animo*; when in order to receive an equivalent, to create an obligation, it is *datio contrahendi animo*; lastly, when made *donandi animo*, from mere liberality, it is a gift, *donatio*.

DARE AD REMANENTIAM.—To give away in fee, or forever.

DARRAIGN.—To clear a legal account; to answer an accusation; to settle a controversy

DARREIN.—This is Norman-French for "last." See ASSIZE OF DARREIN PRESENTMENT; PUIS DARREIN CONTINUANCE.

DARREIN SEISIN.—A plea by the tenant in a writ of right.—*Bowyer*.

DATA.—Grounds whereon to proceed; facts from which to draw a conclusion.

DATE.—See DEED.

DATE, (in a statute). Chit. Bills 206.

— (in stamp act). 2 Barn. & C. 10.

— (of a bill of exchange). 2 Stark. 558

— (of a bond). 1 Gr. (N. J.) 313; 9

Cow. (N. Y.) 255; 2 Salk. 462, 463.

— (of a deed). 2 Johns. (N. Y.) 230;

4 Barn. & C. 908, 911; 7 Dowl. & Ry. 507, 510;

3 Salk. 120.

— (necessity of, in state of demand). 1

South. (N. J.) 92.

— (to return on mandamus). 3 Halst.

(N. J.) 136.

DATE, PRIOR IN, (means prior in time). 3

Day (Conn.) 58, 66.

DATION.—A civil law term for the act of giving something, not as a gift (*donation*), but the giving something without any liberality, as the giving of an office.

DATION EN PAIEMENT.—A giving of something other than money in payment of a debt.

DATIVE, or DATIF.—That which may be given or disposed of at will and pleasure.

DATUM.—A first principle; a thing given; a date.

Datur digniori: It is given to the more worthy. 2 Ventr. 268.

DAUGHTER.—An immediate female descendant.

DAUGHTER, (in a will). L. R. 1 Ch. D. 644.

DAUGHTER-IN-LAW.—The wife of one's son.

DAUPHIN.—The title of the eldest son of the king of France. Disused since 1830.

DAY.—

§ 1. According to Coke, days are either natural or artificial. The natural day consists of twenty-four hours, and includes the solar day and the lunar day, which are artificial days. The solar day is from the rising to the setting of the sun; the lunar day, or night, is from the setting to the rising of the sun. (Co. Litt. 135a. In the old practice at common law, day had several technical meanings, as to which see Co. Litt. 134b; 3 Bl. Com. 277, 316; and CONTINUANCE. See, also, DAYS OF GRACE; WITHOUT DAY.) In the definition of burglary, however, night generally means the time between 9 P. M. and 6 A. M.

§ 2. In the space of a day all the twenty-four hours are usually reckoned; the law generally rejecting all fractions of a day, in order to avoid disputes. Therefore, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences. 2 Bl. Com. 141; 1 *Id.* 463 n. (17).

§ 3. In some cases, however, fractions of a day are taken into account: thus, bills of sale and chattel mortgages comprising the same chattels have priority in the order of the date of their registration, though they may be registered on the same day. See DIES; MONTH; TIME; YEAR.

DAY, (defined). 8 Barb. (N. Y.) 385; 1 Com. Dig. 629; 2 Chit. Bl. Com. 141, n. 3.

— (fraction of). Penn. (N. J.) 57; 1 Cor. (N. Y.) 594; 11 How. (N. Y.) Pr. 193; 1 Nott & M. (S. C.) 405; 5 Humph. (Tenn.) 619; 4 Wheel. Am. C. L. 126.

— (in a lease). 24 Barb. (N. Y.) 9.

DAY, (in a statute). 15 Mass. 188, 192, 225; 4 Pick. (Mass.) 354; 28 Barb. (N. Y.) 284; 12 N. Y. Week. Dig. 545.

— (in computation of time). 13 B. Monr. (Ky.) 460; 16 Pa. St. 14, 15; 15 Ves. 248, 254.

— (nautical, when commences). 2 Cal. (N. Y.) 111.

DAY-BOOK.—A tradesman's account book; a book in which all the occurrences of the day are set down. Being usually a book of original entries, it is admissible in evidence in proof of the transactions entered in it.

DAY IN BANC.—The return day of writs.

DAY, LORD'S, (in a statute). 4 Mass. 462, 465; 8 Pick. (Mass.) 234.

DAY OF THE DATE, (in a lease). Co. Litt. 46b, n. (8); Cro. Jac. 258.

DAY OF TRIAL, (in a code). 6 Rich. (S. C.) 342, 344.

DAY RULE, or DAY WRIT.—A permission granted to the prisoner to go out of the prison, for the purpose of transacting his business, as to hear a case in which he is concerned at the assizes, &c. Abolished by 5 and 6 Vict. c. 22, § 12.

DAY TO SHOW CAUSE.—Under the practice of the Chancery Division of the English High Court, where an infant is defendant to a suit or action in which his inheritance is concerned, and a decree or judgment is made against him, he has in general a day given him after attaining twenty-one, to show cause against the decree or judgment; for this purpose a subpoena is served upon him on his coming of age, requiring him to show cause against the decree, &c.; if he does not do so, he is bound by it. The necessity for this proceeding has been taken away in some cases by statute. Dan. Ch. Pr. 71, 151; Forms 880; Fish. Mort. 1084 *et seq.*; 2 Geo. IV. and 1 Will. IV. c. 47; Trustee Acts, 1850 and 1852. See DEMUR, § 2.

DAY'S WORK, (what constitutes) 62 Me. 526, 527.

DAYERIA.—A dairy.—Cowell.

DAYLIGHT.—That portion of time before sunrise, and after sunset, which is accounted part of the day (as distinguished from night), in defining the offence of burglary. 4 Bl. Com. 224; Cro. Jac. 106.—*Bur-rill.*

DAYS, (computation of). 24 Ind. 194; 12 Iowa 186, 189; 5 Wend. (N. Y.) 137, 138; 9 Barn. & C. 134, 144; 1 Chit. Gen. Pr. 578; 5 Moo. & P. 526, 533; 15 Ves. 248, 254.

— (in a statute). 53 Ill. 87; 46 Mo. 17.

— (means "working-days"). 3 Chit. Com. L. 426-7; 3 Esp. N. P. 121, 123.

DAYS, (within which to file plea). South. (N. J.) 323.

DAYS CLEAR, (defined). 3 Barn. & Ald. 581.

DAYS, ENTIRE, (in statute as to service of process). 3 Halst. (N. J.) 303.

——— (what includes). 14 East 537.

DAYS, IN SIXTY, (in a promissory note). 8 Mass. 453, 455.

DAYS OF GRACE.—Days allowed for making a payment or doing some other act after the time limited for that purpose has expired. Thus, insurance companies commonly allow a certain time for the payment of overdue premiums before forfeiting the policy. Formerly days of grace were granted in actions at the prayer of the plaintiff. Co. Litt. 134 b.

§ 2. In the law of bills of exchange, days of grace are a period allowed in many countries to the drawee or acceptor of a bill of exchange to pay the bill after the due date, originally as a favor, but now as a matter of right. The number of these days varies in different countries: in England, and in most of the United States, it is three; hence, if a bill or note falls due on the 11th June, the acceptor or maker is not bound to pay it until the 14th. Days of grace are not allowed in the case of bills, notes or drafts payable on demand or at sight. Byles Bills 205.

DAYS OF THE WEEK, (courts will take notice of). 2 Chit. Pl. 240.

DAYS RUNNING, (in a bill of lading). 2 Car. & P. 601.

DAYSMAN.—An arbitrator, umpire or elected judge.—*Cowell.*

DAYTIME, (defined). 9 Mass. 154.

——— (in a bond). 9 Mass. 151.

——— (what is). 1 Car. & P. 297, 298.

——— (when it commences and ends). 1 Chit. Gen. Pr. 403.

DAYWERE OF LAND.—As much arable land as would be ploughed up in one day's work.—*Cowell.*

DE.—Of; by; from; out of; affecting; concerning; respecting. Principally used in such phrases as—

DE ADMENSURATIONE.—Of admeasurement. Thus, *de admensuratione dotis*, was a writ for the admeasurement of dower, and *de admensuratione pasturæ* was a writ for the admeasurement of pasture. See **ADMENSUREMENT.**

DE ADVISAMENTO CONSILII NOSTRI.—With (or by) the advice of our

council. Found in old writs of summons to parliament.

DE AESTIMATO.—In Roman law, one of the innominate contracts, and in effect a sale of land or goods at a price fixed (*aestimato*), and guaranteed by some third party, who undertook to find a purchaser.

DE ÆTATE PROBANDA.—For proving age. A writ which formerly lay to summon a jury in order to determine the age of the heir of a tenant *in capite* who claimed his estate as being of full age.—*F. N. B.* 257; *Reg. Orig.* 294.

DE ALLOCATIONE FACIENDA.—See **ALLOCATIONE FACIENDA.**

DE ALTO ET BASSO.—See **ALTO ET BASSO.**

DE AMBITU.—Of obtaining a place by bribery.

DE ANNUA PENSIONE.—A writ of annual pension by which the king, having an annual pension due him from an abbot or prior for any of his chaplains, demands it of the said abbot or prior for the person named in the writ.—*F. N. B.* 231.

DE ANNUO REDITU.—For a yearly rent. A writ to recover an annuity, no matter how payable, in goods or money. 2 Reeves Hist. Eng. Law 258.

DE APOSTATA CAPIENDO.—See **APOSTATA CAPIENDO.**

DE ARBITRATIONE FACTA.—A writ issued when an action was brought for a cause already settled by arbitration.

DE ARRESTANDIS BONIS NE DISSIPENTUR.—See **ARRESTANDIS BONIS, &c.**

DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT.—A writ which lay for the arrest of one who had taken the king's money to serve in the war, and hid himself to escape going.—*Reg. Orig.* 24 b.

DE ARTE ET PARTE.—See **ART AND PART.**

DE ASSISA CONTINUANDA.—See **ASSISA.**

DE ASSISA PROROGANDA.—See **ASSISA.**

DE ATTORNATO RECIPIENDO.—A writ which lay to the judges of a court, requiring them to receive and admit an attorney for a party.—*Reg. Orig.* 172; *F. N. B.* 156.

DE AUDIENDO ET TERMINANDO.—For hearing and determining; to hear and determine. A writ or commission

granted to certain justices, to hear and determine cases of heinous misdemeanor, trespass, riotous breach of the peace, &c.—*Reg. Orig.* 123; *F. N. B.* 110.

DE AVERIIS CAPTIS IN WITHERNAM.—*See* AVERIIS CAPTIS, &c.

DE AVERIIS REPLEGIANDIS.—A writ to replevy beasts. 3 Bl. Com. 149.

DE AVERIIS RETORNANDIS.—For returning cattle. A term used of the pledges in the old action of replevin. 2 Reeves Hist. Eng. Law 177.

DE BENE ESSE.—To do a thing *de bene esse* is to do it provisionally or in anticipation of the occasion when it may be needed. Thus, "in certain cases, the courts will allow evidence to be taken out of the regular course, in order to prevent the evidence being lost by the death or the absence of the witness. This is called 'taking evidence *de bene esse*,' and is looked upon as a temporary and conditional examination, to be used only in case the witness cannot afterwards be examined in the suit in the regular way." Hunt. Eq. 75; Haynes Eq. 183; Mitf. Pl. 52. 149.

DE BIEN ET DE MAL.—*See* BONO ET MALO.

DE BONIS ASPORTATIS.—*See* TRESPASS.

DE BONIS NON.—*See* ADMINISTRATION, § 3; GRANT.

DE BONIS NON AMOVENDIS.—*See* BONIS NON AMOVENDIS.

DE BONIS PROPRIIS.—Of a person's own goods. A term for a judgment against a personal representative or trustee which awards execution against his own individual property.

DE BONIS TESTATORIS.—Of a testator's goods. A term for a judgment against a personal representative which awards execution against the property of the intestate or testator.

DE BONO ET MALO.—*See* BONO ET MALO.

DE CÆTERO.—Henceforth.

DE CALCETO REPAREND.—An old writ for repairing a causeway.—*Reg. Orig.* 154.

DE CATALIS REDDENDIS.—*See* CATALIS REDDENDIS.

DE CAUTIONE ADMITTENDA.—*See* CAUTIONE ADMITTENDA.

DE CERTIFICANDO.—A writ requiring a thing to be certified. A kind of *certiorari*.—*Reg. Orig.* 151, 152.

DE CERTIORANDO.—A writ directed to the sheriff, requiring him to certify to a particular fact.—*Reg. Orig.* 24.

DE CHAMPERTIA.—A writ directed to the justices of the king's bench, requiring them to enforce the statute against champerty.—*Reg. Orig.* 183; *F. N. B.* 172.

DE CHARTIS REDDENDIS.—For redelivering charters. A writ of detinue of charters.—*Reg. Orig.* 159; *F. N. B.* 138.

DE CHIMINO.—A writ for the enforcement of a right of way.—*Reg. Orig.* 155.

DE CLAMIA ADMITTENDA IN ITINERE PER ATTORNATUM.—*See* CLAMIA ADMITTENDA, &c.

DE CLERICO ADMITTENDO.—*See* ADMITTENDO CLERICO.

DE CLERICO CONVICTO DELIBERANDO.—*See* CLERICO CONVICTO, &c.

DE CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM.—*See* CLERICO INFRA SACROS, &c.

DE COMMUNI DIVIDENDO.—*See* COMMUNI DIVIDENDO.

DE COMPUTO.—*See* COMPUTO.

DE CONCILIO CURIÆ.—By the advice (or direction) of the court.

DE CONSANGUINEO, and DE CONSANGUNITATE. Writs of cosinage (*q. v.*)

DE CONSPIRATIONE.—*See* CONSPIRATIONE.

DE CONSUETUDINIBUS ET SERVITIIS.—*See* CONSUETUDINIBUS, &c.

DE CONTRIBUTIONE FACIENDA.—*See* CONTRIBUTIONE FACIENDA.

DE CONTUMACE CAPIENDO.—For arresting a contumacious person. A writ issued out of the Petty Bag Office (*q. v.*) on a *significavit* (*q. v.*) from an ecclesiastical court, for the enforcement of a decree pronounced by that court. It is addressed to the sheriff, and directs the arrest of the person who refuses to obey the decree. Stats. 53 Geo. III. c. 127; 2 and 3 Will. IV. c. 93; 3 and 4 Vict. c. 93; Phillim. Ecc. L. 1261, 1417; Hudson v. Tooth, 2 P. D. 125. *See* CONTUMACY.

DE CONVENTIONE.—See CONVENTIONE.

DE COPIA LIBELLI DELIBERANDA.—See COPIA LIBELLI, &c.

DE CORONATORE ELIGENDO—DE CORONATORE EXONERANDO.—See CORONATORE, &c.

DE CORPORE COMITATUS.—From the body of the county. See BODY OF A COUNTY.

DE CORRODIO HABENDO.—A writ to obtain a corody (*q. v.*)—*Reg. Orig.* 264.

DE CURIA CLAUDENDA.—A writ to compel a defendant to enclose his court, or land about his house, where its being left open was an injury to plaintiff's freehold.—*Reg. Orig.* 155.

DE CURSU, PROCEEDINGS.—The formal proceedings in an action, as opposed to those incidental proceedings that may be taken therein on summons, petition, or motion, all which latter are called summary proceedings.

DE DEBITO.—A writ of debt.—*Reg. Orig.* 139.

DE DECEPTIONE.—A writ of deceit which lay against one who acted in the name of another whereby the latter was damnified and deceived.—*Reg. Orig.* 112.

DE DEONERANDA PRO RATA PORTIONIS.—A writ that lay where one was distrained for rent that ought to be paid by others proportionably with him.—*F. N. B.* 234; *Termes de la Ley*.

DE DIE IN DIEM.—From day to day.—*Bract.* 205 b.

DE DOMO REPARANDA.—A writ which lay for one tenant-in-common to compel his co-tenant to contribute towards the repair of the common property.

DE DONIS.—See ESTATE TAIL.

DE DOTE ASSIGNANDA.—A writ by which the widow of a tenant *in capite* could compel the king's escheator to assign her dower.—*F. N. B.* 263.

DE DOTE UNDE NIHIL HABET.—A writ of dower which lay for a widow to whom no part of her dower had been assigned.

DE EJECTIONE CUSTODIÆ.—A writ which lay for a guardian who had been forcibly ejected from his wardship.—*Reg. Orig.* 162.

DE EJECTIONE FIRMÆ.—A writ which lay for a tenant for years against the

lessor, reversioner, remainderman or stranger who had ousted him during his term. At first only damages for the ouster were claimed, afterwards a recovery of the balance of the term was obtainable, and thus this writ finally became the foundation of the modern action of ejectment.—*Reg. Orig.* 227 b.

DE ESCÆTA.—A writ of escheat, which lay for the lord to recover the land where the tenant died without an heir.—*Reg. Orig.* 164 b.

DE ESCAMBIO MONETÆ.—A writ which anciently lay to enable a merchant to issue a bill of exchange.—*Reg. Orig.* 194.

DE ESSENDO QUIETUM DE TOLONIO.—A writ which lay for those who were by privilege free from the payment of toll, on their being molested therein.—*F. N. B.* 226; *Reg. Orig.* 258 b.

DE ESSONIO DE MALO LECTI.—A writ which issued upon an *essoign* of *malum lecti* being cast, to examine whether the party was in fact sick, or not.—*Reg. Orig.* 8 b. See ESSOIGN.

DE ESTOVERIIS HABENDIS.—A writ which lay for a wife divorced from bed and board, to enable her to recover her alimony or estovers. 1 Bl. Com. 441.

DE ESTREPAMENTO.—A writ which lay to prevent or stay waste by a tenant, during the pendency of a suit against him to recover the lands.—*Reg. Orig.* 76 b; *F. N. B.* 60. See ESTREPEMENT.

DE EXCOMMUNICATO CAPIENDO.—A writ issuing out of chancery and directed to the sheriff, commanding him to arrest and imprison a person who has been excommunicated. Phillim. Ecc. L. 1404 *et seq.*; Stat. 5 Eliz. c. 23. See DE CONTUMACE CAPIENDO; EXCOMMUNICATION; SIGNIFICAVIT.

DE EXCOMMUNICATO DELIBERANDO.—A writ for the delivery of an excommunicated person from prison, where satisfaction had been made to the church.—*Reg. Orig.* 65 b; *F. N. B.* 63 a.

DE EXCOMMUNICATO RECAPENDO.—A writ for retaking an excommunicated person, who had been liberated from prison without making satisfaction to the church, or giving security.—*Reg. Orig.* 67.

DE EXECUTIONE FACIENDA IN WITHERNAM.—A writ for making execution in withernam.—*Reg. Orig.* 82 b. See CAPIAS IN WITHERNAM.

DE EXECUTIONE JUDICII.—A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment.—*Reg. Orig.* 18; *F. N. B.* 20.

DE EXEMPLIFICATIONE.—A writ granted to obtain the exemplification of an original.—*Reg. Orig.* 290 b.

DE EXONERATIONE SECTÆ.—A writ which lay for the king's ward to be discharged of all suit to the county court, hundred, leet, or court baron, during the time of his wardship.—*F. N. B.* 158.

DE EXPENSIS CIVIUM ET BURGENSESIUM.—An obsolete writ addressed to the sheriff to levy the expenses of every citizen and burgh of parliament. 4 *Inst.* 46.

DE EXPENSIS MILITUM.—A writ directed to the sheriff to levy the expenses of the knights of the shire for attendance in parliament.—*Reg. Orig.* 191 b, 192.

DE FACTO.—In fact, opposed to *de jure*, of right. An officer *de facto* is one actually exercising the functions of the office, as opposed to one *de jure* merely, who, although having the lawful right to the office, has either been ousted from, or never actually taken, the possession of the office. The Stat. 11 Hen. VII. c. 1, enacts that no person serving the king for the time being in his wars shall be convicted or attainted of high treason for so doing. The intention was to protect persons serving the king *de facto* against punishment or forfeitures imposed by the king *de jure* on his recovering the kingdom.

DE FACTO, (defined). 3 *Wheel. Am. C. L.* 444.

—— (distinguished from "de jure"). 73 *N. C.* 546, 550.

DE FACTO ACTS, (of officers are valid). 7 *Wheel. Am. C. L.* 142, 305.

DE FACTO CONTRACT, (defined). 74 *N. Y.* 568, 575.

DE FACTO CORPORATION, (distinguished from "de jure"). *Saxt. (N. J.)* 369.

DE FACTO GOVERNMENTS, (what are). 6 *Otto (U. S.)* 177, 185; 43 *Ala.* 204; 42 *Miss.* 651, 703.

DE FACTO MARRIAGE, (what is). 4 *Pick. (Mass.)* 220, 221.

DE FACTO OFFICER, (defined). 17 *Conn.* 585, 588; 35 *Id.* 449, 454; 69 *Ill.* 523; 37 *Me.* 423, 428; 48 *Id.* 79; 71 *Id.* 207, 210; 1 *Hall (N. Y.)* 198; 8 *How. (N. Y.)* Pr. 363; 7 *Johns. (N. Y.)* 549; 9 *Id.* 135; 24 *Wend. (N. Y.)* 520, 539; 7 *Jones (N. C.)* L. 107, 113; 73 *N. C.* 546, 550; 55 *Pa. St.* 468, 472.

—— (who is). 6 *Conn.* 428, 435; 3 *Bush (Ky.)* 14, 17; 3 *N. H.* 408, 413; 5 *Wend. (N. Y.)* 231, 234; 9 *Id.* 35, 36, 414; 2 *Rawle (Pa.)* 139, 140; 11 *Serg. & R. (Pa.)* 411, 414; 2 *Atk.* 482; *Str.* 1090.

—— (who is not). *South. (N. J.)* 398; 6 *East* 356, 368.

DE FACTO OWNER, (defined). 57 *Ala.* 510.

DE FAIRE ECHELLE, (in a policy of marine insurance). 14 *Wend. (N. Y.)* 399, 491.

DE FALSO JUDICIO.—A writ of false judgment.—*Reg. Orig.* 15. See **WRIT OF FALSE JUDGMENT**.

De fide et officio judicis non recipitur quæstio; sed de scientia, sive error sit juris aut facti: A question cannot be admitted as to the good faith and honesty of a judge; but otherwise concerning his knowledge, whether he be mistaken as to the law or the fact. It is an ancient rule that a judge of record is not liable to an action for anything done by him in his judicial character. This immunity is given for the public good and the advancement of justice; for it is obvious that to administer law properly, the judge should be free in thought and independent in character. A judge, however, is not excused for neglect of duty or misconduct, or *a fortiori* for corruption.

DE FINE CAPIENDO PRO TERRIS.—A writ which lay for a juror who had been attainted for giving a false verdict, to enable him to obtain the release of his person, lands and goods, on the payment of a certain fine to the king.—*Reg. Orig.* 232.

DE FINE NON CAPIENDO PRO PULCHRE PLACITANDO.—A writ prohibiting the taking of fines for beaupleader.—*Reg. Orig.* 179. See **BEAUPLEADER**.

DE FINE PRO REDISSEISINA CAPIENDO.—A writ which lay to obtain the release of one imprisoned for a redisseisin, on payment of a fine.—*Reg. Orig.* 222 b.

DE FORISFACTURA MARITAGII.—A writ of forfeiture of marriage.—*Reg. Orig.* 163, 164.

DE FRANGENTIBUS PRISONAM.—The name of the Statute 1 Ed. II. st. 2, which enacts that no person shall have judgment of life or member for breaking prison, unless committed for some capital offence.

DE GESTU ET FAMA.—An ancient writ which lay in cases where the conduct and reputation of a person were impeached.

De gratia speciali certa scientia et mero motu, talis clausula non valet in his in quibus præsumitur principem esse ignorantem (1 *Co.* 53): The clause "of our special grace, certain knowledge, and mere motion," is of no avail in those things in which it is presumed that the prince was ignorant.

De grossis arboribus decimæ non dabuntur sed de sylvia cædua decimæ dabuntur (2 *R. R.* 123): Of whole trees, tithes are not given; but of wood cut to be used, tithes are given.

DE HÆREDE DELIBERANDO ILLI QUI HABET CUSTODIAM TERRÆ.—A writ for the delivery of an heir to him who has wardship of the land. It was directed to the sheriff, commanding him to re-

quire one that had the body of the ward to deliver him to the person whose ward he was by reason of his land.—*Reg. Orig.* 161.

DE HÆREDE RAPTO ET ABDUCTO.—A writ which anciently lay for a lord who, having by right the wardship of his minor tenant, could not obtain his body, which had been carried away by another.—*Reg. Orig.* 163.

DE HÆRETICO COMBURENDO.—An ancient writ which lay where a heretic had been convicted of heresy, had abjured, and again relapsed into heresy. 4 Bl. Com. 46.

DE HOMAGIO RESPECTUANDO.—A writ for respiting or postponing homage.—*F. N. B.* 269, A.

DE HOMINE CAPTO IN WITHERNAM.—A writ which lay to take a man who had carried away a bondman or bondwoman into another country beyond the reach of a writ of replevin. 3 Bl. Com. 129.

DE HOMINE REPLEGIANDO.—A writ to replevy a man out of prison, or out of the custody of a private person, upon security being given to the sheriff that the man shall be forthcoming to answer any charge against him.—*F. N. B.* 66. This writ has been superseded by the writ of *habeas corpus* in most of the States, but has been recently in use in some of them. 1 Kent Com. 404, n. · Mass. Gen. Stat. c. 144, § 42 *et seq.*

DE IDENTITATE NOMINIS.—A writ which lay for one arrested in a personal action and committed to prison under a mistake as to his identity, the proper defendant bearing the same name.—*Reg. Orig.* 194.

DE IDIOTA INQUIRENDO.—A common law writ to inquire whether a man be an idiot or not. It was tried by a jury of twelve men, and, if they found him *purus idiota*, the profits of his lands and the custody of his person might have been granted by the sovereign to some subject who had interest enough to obtain them.—*F. N. B.* 232.

DE INCREMENTO.—Of increase. See COSTS DE INCREMENTO.

DE INGRESSU.—A writ of entry.—*Reg. Orig.* 227 b *et seq.* See ENTRY.

DE INJURIA SUA PROPRIA ABSQUE TALI CAUSA (more compendiously called the traverse *de injuria*).—A species of traverse by replication in pleading, which varies from the common form, and which, though confined to particular actions and to a particular stage of the pleadings, is of frequent occurrence in jurisdictions where the common law system of pleading prevails. It always tenders issue; but, on the other hand, differs

(like many of the general issues) from the common form of a traverse, by denying in general and summary terms, and not in the words of the allegation traversed. This species of traverse occurs in the replication in actions of trespass, trespass on the case (including a species of *assumpsit*) and in the plea in bar in replevin, but is not used in any other stages of the pleadings.

DE INTRUSIONE.—A writ of intrusion; where a stranger entered after the death of the tenant, to the injury of the reversioner.—*Reg. Orig.* 233 b.

DE JUDICATO SOLVENDO.—For payment of the amount adjudged. In Scotch and admiralty law, bail to the action, or special bail.

DE JUDICIO SISTI.—For appearing in court. In Scotch and admiralty law, bail for a defendant's appearance.

DE JURE.—(1) Of or by right or law; rightful; lawful. (4 Bl. Com. 77.) A king or officer *de jure*. A wife *de jure*. The opposite of *de facto* (*q. v.*) (2) Of right; as distinguished from *de gratia*, of grace. (3) By or at law; according to law; as distinguished from *de equitate*, according to equity.

De jure decimarum, originem ducens de jure patronatus, tunc cognitio spectat at legem civilem, i. e. communem (Godb. 63): With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law—that is, the common law.

De jure judices, de facto juratores, respondent: The judges answer to the law, the jurors to the fact.

DE LA PLUS BELLE-DOWER, where the wife was endowed with the fairest part of her husband's estate. Being a consequence of the tenure by knight's service, it is virtually abolished by the Statute 12 Car. II. c. 24, which converts those tenures into socage.

DE LATERE.—From the side; on the side, collaterally; of collaterals.

DE LEPROSO AMOVENDO.—A writ for removing a leper.—*Reg. Orig.* 267; *F. N. B.* 234, E.

DE LIBERA FALDA.—A writ of free fold.—*Reg. Orig.* 155.

DE LIBERA PISCARIA.—A writ of free fishery.—*Reg. Orig.* 155.

DE LIBERATE ALLOCANDA.—See LIBERATE.

DE LIBERO PASSAGIO.—A writ of free passage.—*Reg. Orig.* 155.

DE LIBERTATE PROBANDA.—A writ which lay for such as, being demanded for villeins or niefs, offered to prove themselves free.—*Reg. Orig.* 57 b; *F. N. B.* 77, F.

DE LIBERTATIBUS ALLOCANDIS.—A writ which lay, in various forms, for a citizen or burgess to obtain certain liberties, to which he was entitled.—*Reg. Orig.* 262, 263 b; *F. N. B.* 229.

DE LICENTIA TRANSFRETANDI.—An ancient writ directed to the wardens of a sea-port, commanding them to permit the persons therein named to cross the sea from such port, on certain conditions.—*Reg. Orig.* 193 b.

DE LUNATICO INQUIRENDO.—A writ issued to the sheriff, commanding him to inquire into the condition of a person's mind, *i. e.* whether he be a lunatic or not. See LUNACY.

DE MAGNA ASSISA ELIGENDA.—A writ by which the grand assize was chosen and summoned.—*Reg. Orig.* 8; *F. N. B.* 4.

DE MALO.—Of illness. This phrase was frequently used to designate several species of *essoign* (*q. v.*), such as *de malo lecti*, of illness in bed; *de malo veniendi*, of illness (or misfortune) in coming to the place where the court sat; *de malo villæ*, of illness in the town where the court sat.

DE MANUCAPTIARE, or MANUCAPTIONE.—A writ commanding the sheriff to take sureties for a prisoner's appearance, and to discharge him.—*Reg. Orig.* 268 b; *F. N. B.* 250.

DE MANUTENENDO.—A writ against one charged with maintenance (*q. v.*)—*Reg. Orig.* 182 b.

DE MEDIETATE LINGUÆ.—See JURY.

DE MEDIO.—A writ in the nature of a writ of right, which lay for an under-tenant where, upon a subinfeudation, the *mesne*, or middle lord (the defendant in the writ), suffered the under-tenant, or tenant paravail, to be distrained upon by the lord paramount for the rent due him from the *mesne* lord.—*Reg. Orig.* 160; *F. N. B.* 135; *Booth Real Act.* 136.

DE MELIORIBUS DAMNIS.—Where the jury, by mistake, sever the damages between several defendants in an action of trespass, the plaintiff may cure the defect by taking judgment *de melioribus damnis* against one, and entering a *nolle prosequi* as to the others. 1 Chit. Arch. Prac. (12 edit.) 461.

DE MERCATORIBUS.—The statute of Edward I., commonly called "Acton Burnell,"

from the place where it was passed. See ACTON BURNELL.

De minimis non curat lex (Cro. Eliz. 353): The law cares not about very trifling matters. This is a maxim of law and also of equity, intended to protect the court from invasions of its dignity, and the litigants from invasions upon one another. But the maxim has little (if any) application to the inferior courts, the very object for which these courts were established having been and being to administer justice in matters of small amount.

DE MINIMIS NON CURAT LEX, (explained). 4 Barb. (N. Y.) 620; 20 *Id.* 644; 4 Duer (N. Y.) 599; 5 Hill (N. Y.) 170; 12 How. (N. Y.) Pr. 223.

DE MINIS.—A writ which lay to compel one who has threatened a person with personal violence or the destruction of his property, to keep the peace.—*Reg. Orig.* 88 b, 89; *F. N. B.* 79, G. 80.

DE MITTENDO TENOREM RECORDI.—A writ to send the tenor of a record, or to exemplify it under the great seal.—*Reg. Orig.* 220 b.

DE MODERATA MISERICORDIA CAPIENDA.—A writ which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bailiff, commanding him to take a moderate amercement.—*Reg. Orig.* 80 b; *F. N. B.* 75, 76.

DE MODO DECIMANDI.—See MODUS DECIMANDI.

De molendino de novo erecto non jacet prohibitio (Cro. Jac. 429): A prohibition lies not against a newly-erected mill.

De morte hominis nulla est cunctatio longa (Co. Litt. 134): Concerning the death of a man [in matters of life and death] no delay is long.

DE NATIVO HABENDO.—A writ which lay for a lord directed to the sheriff, commanding him to apprehend a fugitive villein, and restore him, with all his chattels, to the lord.—*Reg. Orig.* 87; *F. N. B.* 77.

De nomine proprio non est curandum cum in substantia non erretur; quia nomina mutabilia sunt, res autem immobiles (6 Co. 66): As to the proper name, it is not to be regarded where it errs not in substance; because names are changeable, but things immutable.

De non apparentibus, et non existentibus, eadem est ratio (5 Co. 6): As to things not apparent, and those not existing, the rule is the same.

DE NON DECIMANDO.—A prescription *de non decimando* (sometimes inaccurately called a *modus de non decimando*, the word

modus in the phrase *modus decimandi* being erroneously taken to mean prescription; the full name for a *modus* was *prescription de modo decimandi*, concerning the manner of tithing,) is a claim to be exempt from tithes and to pay no compensation in lieu of them. Such a prescription can only be set up by spiritual persons or by corporations or persons claiming under them, and formerly it was necessary to prove that the land in question had been immemorially exempt from tithes. (2 Bl. Com. 31.) But by the Stat. 2 and 3 Will. IV. c. 100, non-payment of tithes during a certain period (thirty years in some cases and sixty in others) is sufficient to establish a prescriptive exemption. As to tithes in lay lands, see Stat. 3 and 4 Will. IV. c. 27, § 1.

DE NON PROCEDENDO AD ASSISAM.—A writ forbidding the justices from holding an assize in a particular case.—*Reg. Orig.* 221.

DE NON RESIDENTIA CLERICI REGIS.—An ancient writ where a parson was employed in the royal service, &c., to excuse and discharge him of non-residence. 2 Inst. 264.

DE NOVO.—Afresh; anew. See *VENIRE DE NOVO*.

De nullo, quod est sua natura indivisibile, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciat ei ad valentiam (Co. Litt. 32): A widow shall have no part of that which in its own nature is indivisible, and is not susceptible of division, but let the heir satisfy her with an equivalent.

DE ODIS ET ATIA.—An obsolete writ which commanded the sheriff to inquire whether a prisoner charged with murder was committed on general cause of suspicion or merely *propter odium et atiam*, for hatred and ill-will, with a view, if the latter were found to be the case, of afterwards issuing another writ to admit him to bail. 1 Reeves Hist. Eng. Law 252

DE ONERANDO PRO RATA PORTIONIS.—An ancient writ, where a person was distrained for rent which ought to be paid by others proportionably with him.—*F. N. B.* 234; *New Nat. Brev.* 586.

DE PARCO FRACTO.—A writ or action for damages caused by a pound-breach (*q. v.*) It has long been obsolete. Co. Litt. 47 b; 3 Bl. Com. 146.

DE PARTITIONE FACIENDA.—A writ which lay to make partition of lands or tenements held by several as coparceners, tenants-in-common, &c.—*Reg. Orig.* 76; *F. N. B.* 61, R; *O. N. B.* 142.

DE PERAMBULATIONE FACIENDA.—A writ which lay to ascertain disputed or doubtful boundaries of lordships or towns, which was done by walking about, through

or between them. It was directed to the sheriff, commanding him to go with twelve discreet and lawful knights of his county, to the land in question, and by their oath to cause a perambulation to be made between them, according to their respective metes and bounds.—*Reg. Orig.* 157 b; *F. N. B.* 133, D. See *PERAMBULATION*.

DE PIGNORE SURREPTO FURTI, ACTIO.—A civil law action to recover a pledge stolen.

DE PIPA VINI CARIANDA.—A writ of trespass for carrying a pipe of wine so carelessly that the contents were lost.—*Reg. Orig.* 110.

DE PLEGIIS ACQUIETANDIS.—A writ that lay for a surety against his principal, where the latter did not pay the money at the appointed day, and the surety was compelled to pay it.—*Reg. Orig.* 158. 3 Reeves Hist. Eng. Law 65.

DE PONENDO SIGILLUM AD EXCEPTIONEM.—An old writ commanding justices to affix their seal to exceptions taken before them.—*Reg. Orig.* 182.

DE POST DISSEISINA.—A writ which lay for one, who, having recovered his lands from a disseisor, was a second time disseised by him.—*Reg. Orig.* 208.

DE PRÆROGATIVA REGIS.—The Statute 17 Edw. II. st. 1, which enacts, in affirmance of the common law, that the king shall have ward of the lands of natural fools, taking the profits, without waste or destruction, and shall find them necessities; and after the death of such idiots, he shall render the estate to the heirs. This was in order to prevent such idiots from aliening their lands, and their heirs from being disinherited.

DE PROCEDENDO IN ASSISA.—A writ commanding the justices to proceed in an assize, the proceedings in which had been stayed.—*Reg. Orig.* 220.

DE PROPRIETATE PROBANDA.—A writ to determine property in replevin, where the defendant claims title to the goods sought to be replevied.—*Reg. Orig.* 85 b.

DE PROTECTIONE.—See *WRIT OF PROTECTION*.

DE QUIBUS SUR DISSEISIN.—An ancient writ of entry.

DE QUOTA LITIS.—A civil law term for a contract by which one who has a difficult claim to recover, agrees with another to give him a part thereof for his services in recovering the claim. See *CHAMPERTY*.

DE RATIONABILI BONORUM PARTE.—A writ anciently given to the wife and children of a decedent to recover their reasonable parts of his goods, which he could not bequeath away from them.

DE RATIONALIBUS DIVISIS.—A writ to determine the boundaries between the lands of two persons which lay in different towns, where one party complained of encroachment.—*F. N. B.* 128, M. 3 Reeves Hist. Eng. Law 48.

DE RECORDO ET PROCESSU MITTENDIS.—A kind of writ of error in former use.—*Reg. Orig.* 209.

DE RECTO.—A writ of right (*q. v.*)—*Reg. Orig.* 1.

DE RECTO DE ADVOCATIONE.—A writ which lay to restore the right of presentation to a benefice.—*F. N. B.* 30, B.

DE RECTO DE DOTE.—A writ of right of dower.—*Reg. Orig.* 3; *F. N. B.* 7, E.

DE RECTO DE RATIONABILI PARTE.—*See* DE RATIONABILI BONORUM PARTE.

DE REDISSEISINA.—A writ similar to the *de post disseisina* (*q. v.*)—*Reg. Orig.* 206 b.

DE REPARATIONE FACIENDA.—A writ by which one tenant-in-common seeks to compel another to aid in repairing the property held in common. 8 Barn. & C. 269.

DE REPLEGIARE, or REPLEGIARI.—A writ of replevin.—*F. N. B.* 68, D. *See* REPLEVIN.

DE RESCUSSU.—A writ which lay where cattle distrained, or persons under arrest, were rescued from those having them in charge.—*Reg. Orig.* 117, 118.

DE RETORNO HABENDO.—A writ of execution issued in an action of replevin to compel the return of goods rightfully taken in distress and replevied. It seems to have fallen into disuse, the ordinary writ of delivery (*q. v.*) being sufficient. Woodf. Land. & T. 481. *See* ELONGATA; REPLEVIN.

DE SALVA GARDIA.—A writ of safeguard allowed to strangers seeking their rights in English courts, and apprehending violence or injury to their persons or property.—*Reg. Orig.* 26.

DE SALVO CONDUCTU.—A writ of safe conduct.—*Reg. Orig.* 25 b, 26.

DE SCUTAGIO HABENDO.—A writ which lay against tenants by knight-service, to compel them to serve in the wars, or to pay escuage, *i. e.* a sum of money.—*F. N. B.* 83, C. It also lay for a tenant *in capite* who had already served in the army or paid his fine against those who held of him by knight-service.—*Reg. Orig.* 88; *F. N. B.* 83.

DE SECTA AD MOLENDINUM.—A writ for compelling the continuance of custom to a mill.—*Reg. Orig.* 153; *F. N. B.* 122, M.

DE SECUNDA SUPERONERATIONE.—A writ which lay where admeasurement of pasture had been made, and he who first surcharged the common, did so again, notwithstanding the admeasurement.—*Reg. Orig.* 157; *F. N. B.* 126, E.

De similibus ad similia eadem ratione procedendum est: From like to like we are to proceed by the same rule.

De similibus idem est judicium (7 Co. 18): In like cases the judgment is the same.

DE SON TORT.—*See* EXECUTOR.

DE SON TORT DEMESNE.—These are words which were once commonly used in the replication to a defendant's plea in an action of trespass *quare clausum fregit*, as thus: A. sues B., B. pleads that he committed the alleged trespass by the command of X.; A. replies that B. did it *de son tort demesne, sans ceo que X. lui command modo et forma*. The phrase amounted in effect to a traverse of the command which was attempted to be justified under. Since the cases of *Trevelian v. Pyne* (Salk. 107), and *Chambers v. Donaldson* (11 East 65), such a traverse has been permitted, without involving any implied admission in another of a title justifying the alleged command.—*Brown*.

DE STATUTO MERCATORIO.—The writ of statute merchant.—*Reg. Orig.* 146 b. *See* STATUTE MERCHANT.

DE STATUTO STAPULÆ.—The writ of statute staple.—*Reg. Orig.* 151.

DE SUPERSEDENDO.—A writ of supersedeas. *See* SUPERSDEAS.

DE TALLAGIO NON CONCEDENDO.—An informal statute (34 Edw. I.) reformulating illegality of taxation (for home purposes) without the consent of parliament.

DE THEOLONIO.—A writ which lay for a person who was prevented from taking toll.—*Reg. Orig.* 103.

DE TRANSGRESSIONE.—A writ of trespass.—*Reg. Orig.* 92. *See* TRESPASS.

DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM.—A writ or commission for the hearing and determining any outrage or misdemeanor. *See* OYER AND TERMINER.

DE UXORE RAPTA ET ABDUCTA.—A writ which lay for a man whose wife had been ravished and carried away.—*Reg. Orig.* 97; *F. N. B.* 89.

DE VASTO.—A writ which lay for him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, who had committed waste.—*Reg. Orig.* 72; *Reg. Jud.* 17 b; *F. N. B.* 55. *See* WASTE.

DE VENTRE INSPICIENDO.—Where the widow of an owner of land is suspected of feigning herself with child in order to produce a supposititious heir to the estate, the heir presumptive may have a writ *de ventre inspiciendo*, to examine whether she be with child or not; and if she be, to keep her under proper restraint until delivered. The writ appears to direct the sheriff to summon a jury of matrons for the purpose. (Co. Litt. 8 b, 123 b and notes; 1 Bl. Com. 456; Theaker's Case, Cro. Jac. 685.) It is, however, practically obsolete. The writ is also issued where a woman sentenced to death claims to be with child. 4 Bl. Com. 495.

DE VI LAICA REMOVENDA.—For the removal of lay force. An obsolete writ, which seems to have been applicable where an incumbent was hindered or disturbed in his possession of the benefice. Phillim. Ecc. L. 513; *Ex parte Jenkins*, L. R. 2 P. C. 258.

DE VICINETO.—From the neighborhood, or vicinage. (3 Bl. Com. 360.) A term applied to a jury.

DE WARRANTIA CHARTÆ.—See WARRANTIA CHARTÆ.

DE WARRANTIA DIEI.—A writ that lay where a man had a day in any action to appear in proper person, and the king at that day, or before, employed him in some service, so that he could not appear at the day in court. It was directed to the justices, that they should not record him to be in default for his not appearing.—*F. N. B.* 17, A.; *Termes de la Ley*.

DEACON.—(1) In ecclesiastical law, a minister or servant in the church, whose office is to assist the priest in divine service, and the distribution of the sacrament, &c. He may now perform any of the divine offices which a priest may, except only pronouncing the absolution and consecrating the sacrament of the Lord's Supper. (2) A lay office in protestant churches other than the Church of England.

DEAD, ABSENT, OR OTHERWISE INCAPABLE OF ACTING, (when includes disqualification). Wilberf. Stat. L. 186.

DEAD BODY.—A corpse. A gaoler cannot detain the dead body of a person in his custody under a *ca. sa.* until the executors of the deceased person satisfy his pecuniary claims upon the deceased. (*Regina v. Fox*, 2 Q. B. 246. See, also, *Jones v. Ashburnham*, 4 East 455.) To disinter a dead body for the purpose of dissection is a misdemeanor punishable by statute in the several jurisdictions.

DEAD BORN.—See MORTUUS EXITUS.

DEAD FREIGHT.—The unsupplied part of a cargo, or the freight payable by a merchant, where he has not shipped a full cargo, for the part not shipped.

DEAD HEADS, (defined). Phil. (N. C.) L. 21, 22.

DEAD LETTERS.—Letters which have been transmitted by mail to their respective addresses and remain uncalled for and undelivered for a specified time, when they are sent to the "dead letter office," opened, and, if of sufficient importance, returned to the writers.

DEAD MAN'S PART.—The remainder of an intestate's moveables, besides that which of right belongs to his wife and children. This was formerly made use of in masses for the soul of the deceased; subsequently, the administrators applied it to their own use and benefit, until the 1 Jac. II. c. 17 subjected it to distribution amongst the next of kin. In Scotland the "dead's part" of a man's personality is that part of which he is entitled to dispose by will.—*Wharton*.

DEAD PLEDGE.—A mortgage of lands or goods.

DEAD USE.—A future use.

DEAD WEIGHT, (in charter-party). 3 C. P. D. 443.

DEAD WITHOUT ISSUE, (in a will). 1 Ves. Jr. 562, 563.

DEADLY WEAPON, (in a statute). 8 Bush (Ky.) 387.

— (what is). 1 Ired. (N. C.) L. 76, 87.

— (what is not). 8 Ired. (N. C.) L. 407, 412.

DEAF AND DUMB.—A man that is born deaf, dumb and blind, is looked upon by the law as in the same state as an idiot, he being supposed incapable of any understanding. (1 Bl. Com. 304.) Nevertheless, a deaf and dumb person may be tried for felony, if the prisoner can be made to understand by means of signs. (1 Leach C. L. 102.) As to when he is a competent witness, see Tayl. Ev. § 1248.

DEAFFORESTED, or DISAFFORESTED.—Discharged from being a forest, or freed and exempted from the forest laws. 17 Car. I. c. 16.

DEAL OR TRADE, (in bank charter). 8 Wheat. (U. S.) 338, 349.

DEAL, TO, (defined). 17 Wend (N. Y.) 524, 526.

DEALER, (defined). 65 Me. 280, 284; 37 Mich. 506, 507; 21 Vt. 484, 487.

— (in a statute). 11 East 181; 2 T. R. 381, 385.

— (in revenue law). 44 Ala. 29.

DEALER AND CHAPMAN, (in an affidavit). 2 Ves. & B. 399, 400.

DEALER IN SECOND-HAND GOODS, (as used in city ordinance). 79 Ill. 178.

DEALER IN TOBACCO, (defined). 44 Ala. 29 31.

DEALING, (defined). 22 Wend. (N. Y.) 181, 190.

— (in bankruptcy act). 17 Ch. D. 664.

DEALING IN GOODS, WARES AND MERCHANDISE, (what is not). 2 Ala. 451, 460.

DEALING IN LANDS, (what is not). 11 Wis. 334.

DEALING, IN THE USUAL AND ORDINARY COURSE OF TRADE AND, (in a statute). 11 East 128.

DEALINGS, (defined). 3 Car. & P. 85; Moo. & M. 137.

DEAN—DEAN AND CHAPTER.—LATIN: *decanus*, one set over ten monks or canons.

The council of a bishop, who also assist in the celebration of divine service in his cathedral. The dean is the president of the council. The chapter consists of dignitaries of the church called canons. (1 Bl. Com. 382; 2 Steph. Com. 674; Stats. 3 and 4 Vict. c. 113; 35 and 36 Vict. c. 8. See ARCHDEACON; BISHOP; CONGE D'ELIRE.) There are also other kinds of deans, such as rural deans (*q. v.*), deans of peculiars (of whom the Dean of Arches is one), honorary deans, such as the Dean of the Chapel Royal at St. James', and deans of provinces or deans of bishops; the Bishop of London is dean of the province of Canterbury. Co. Litt. 95 a, n. (1). See CORPORATION, § 5.

DEAN OF ARCHES.—The chief judicial officer or "official principal" of the Archbishop of Canterbury. (Phillim. Ecc. L. 1203.) He is the judge of the Court of Arches (*q. v.*) and is not really a dean in the modern sense of that word. *Id.* 260.

DEATH.—

§ 1. **Civil and natural.**—"There is a death in deede [or natural death], and there is a civill death, or death in law, *mors civilis* and *mors naturalis*." (Co. Litt. 132a.) Civil death formerly took place in England, when a man was banished or abjured the realm by the process of the common law, or when a man became professed in religion, for on such an event happening his property devolved as if he were really dead (Litt. § 200; 1 Bl. Com. 132), and therefore grants of land for life were formerly made for the term of the man's natural life. The doctrine of civil death in such cases is now abolished (*Rex v. Lady Portington*, 1 Salk. 162; Stat. 21 Jac. I. c. 28), and also in the case of conviction for treason or felony (see **ATTAINDER**); but it seems that it may still occur where a person is outlawed (Wms. Real Prop. 23), which still produces the effect

of attainder. See **CIVIL DEATH**; **COMMORIENTES**; **DONATIO CAUSA MORTIS**.

§ 2. **In criminal law** the punishment of death is inflicted in England and most of the States by hanging the offender by the neck until he is dead; but in a few States, under certain circumstances, the condemned person is shot. See **MURDER**; **PIRACY**; **TREASON**.

§ 3. **Presumption of death.**—Where a person has not been heard of for a certain period, usually seven years, and his absence is not explainable, the law raises a *prima facie* presumption that he is dead (*Row v. Hasland*, 1 W. Bl. 406); but that presumption does not in any way fix the time of death, of which strict evidence must be given by the party who derives any interest therefrom. *Doe v. Nepean*, 2 Sm. Lead. Cas. 510.

DEATH-BED DEED.—A deed made during an illness of which the grantor afterwards died.—*Bell Dict.*

DEATH, IN CASE OF, (in a will). 8 Com. Dig. 436; 1 Russ. & M. 553; 1 Swanst. 161, 164.

DEATH OR DISABILITY, (in a statute). 3 Dutch. (N. J.) 185.

DEATHS, IN CASE OF EITHER OF THEIR, (in a will). 2 Keen 701, 703; 1 Younge & Coll. C. C. 492.

DEATHSMAN.—An executioner or hangman; he that executes the extreme penalty of the law.

DEBATES, (synonymous with "controversies"). Co. Litt. 292, A.

DEBAUCH, (defined). 8 Abb. (N. Y.) Pr. 384, 389; 2 Hilt. (N. Y.) 323, 329.

DEBENTURE.—LATIN: *debentur*, they [moneys] are due. The word with which certain obsolete bonds given by the exchequer began.—*Blount*.

§ 1. **In English law.**—An instrument issued by a company or public body as security for a loan of money. It contains either expressly or impliedly a promise to pay the amount mentioned in it, and almost invariably creates a charge on the whole or part of the property of the company or public body. A debenture generally forms part of a series or issue of similar instruments, with a provision that they shall all rank *pari passu* in proportion to their amounts. As to debentures generally, see *Cav. Sec. 267 et seq.**

* Debentures are of two classes. A. Debentures so called by the statutes under which they are issued: These are (1) *Mortgage debentures*, issued under the *Mortgage Debenture Acts*, 1865

and 1870. The object of these acts is to enable a company formed for the purpose of lending or borrowing money on real securities, to raise money by issuing debentures charged on the

§ 2. In American law, a custom-house certificate given by the collector of the port to the exporter or importer of goods, entitling him, under certain circumstances, to a drawback of duties paid on exported or imported goods. *See* DRAWBACK.

securities for the time being in its possession, whether they belong to the company itself or to persons who have borrowed money of it. Provision is made for the registration in the Land Registry (now regulated by the Land Transfer Act, 1875,) of the securities on which the debentures are to be charged, and for ascertaining their value; also for registering the debentures themselves, and for enabling a person who has borrowed money of the company to redeem his security notwithstanding that the company has made use of it by issuing debentures charged on it. (2) *Local Loans Act*.—Debentures issued by a local authority (*e. g.* an urban sanitary authority) pursuant to the Local Loans Act, 1875, (repealing the County Debentures Act, 1873.) The provisions of this act are made applicable to a local authority either by a special act of parliament incorporating its provisions, or by sanction of the Local Government Board. The security generally consists of a local rate, with or without other property. The amount of the debenture may be made payable either to the bearer or to a person named therein, his executors, administrators or assigns; the latter kind is called a "nominal debenture." (3) *Private Acts*.—There are also numerous private or special acts of parliament authorizing the issue of debentures by the companies or public bodies to which they relate. The nature and incidents of such debentures, of course, depend on the statutory provisions in each case.

B. Debentures, popularly so called, are of the following varieties: (1) *Railway Debentures*.—Mortgages issued by railway and other companies (incorporated by special act) under the Companies Clauses Acts, 1845 and 1863. Such debentures contain an assignment of the undertaking and receipts of the company, and not merely a charge on them. Debentures issued by railway companies are also subject to the Railway Companies Securities Act, 1866, and the Railway Companies Act, 1867. (Hodg. Rail. 118 *et seq.*; Cav. Sec. 281. *See* DEBENTURE STOCK.) (2) *Commissioners' Debentures*.—Mortgages issued by commissioners and similar bodies under the Commissioners Clauses Act, 1847. The provisions of this act are similar to those of the Companies Clauses Act, 1845. (Cav. Sec. 292.) (3) *Companies Act*, 1862.—Debentures of a company registered under the Companies Act, 1862, issued pursuant to express powers contained in the articles of association. Such debentures vary in form and effect according to the provisions of the articles and the skill of the draftsman, but they generally purport to create a charge on the whole or part of the property of the company, (*In re Florence Land Co., Ex parte Moor*, 10 Ch. D. 530; *In re Colonial Trusts Corporation*, 15 Ch. D. 465; *see*

DEBENTURE, (in a statute). 7 Q. B. D. 172

DEBENTURE STOCK.—A stock or fund representing money borrowed by a company or public body, in England, and charged on the whole or part of its property. It differs from debentures chiefly in these respects: the title of each original holder appears in a register, instead of being represented by an instrument

SECURITY;) sometimes, however, so-called debentures are merely bonds or in the form of promissory notes. *Crouch v. Crédit Foncier of England*, L. R. 8 Q. B. 374.

Interest.—The payment of interest on debentures issued under statutory powers (*i. e.* debentures belonging to all the above classes except B. (3)) may be enforced by the judicial appointment of a receiver to collect the income of the property and apply it in payment of the interest. *See* RECEIVER.

Foreign.—Debentures issued by foreign or colonial governments cannot be enforced by legal proceedings in England. *Twycross v. Dreyfus*, 5 Ch. D. 605; *Sloman v. New Zealand*, 1 C. P. D. 563.

Negotiability.—The question whether a debenture is a negotiable instrument is sometimes one of difficulty. It seems clear that the varieties mentioned under A. (1), B. (1) and (2), and the nominal debentures mentioned under A. (2), are merely statutory mortgages, assignable in a particular form, and not negotiable. A debenture to bearer under A. (2), appears to be negotiable so far as the issuing authority is concerned, *i. e.* the authority would be bound to pay the bearer without reference to his title; but it does not appear whether a person wrongfully in possession of such a debenture could give a good title to a *bonâ fide* purchaser as against the true owner. The question whether a debenture under B. (3) is or can be negotiable in the latter sense (*i. e.* as between the successive holders of it) must apparently be answered in the negative; whether the holder of a particular debenture belonging to that class can claim the amount from the company, irrespectively of any question between the company and a prior holder, depends on the form of the instrument and (in some cases) on the circumstances attending its issue. (*See Crouch v. Crédit Foncier*, L. R. 8 Q. B. 374; *In re Blakely Ordnance Co.*, L. R. 3 Ch. 154; Cav. Sec. 273.) Debentures of foreign governments may by usage of trade be negotiable instruments in the full sense of the term. *Goodwin v. Roberts*, L. R. 10 Ex. 76, 337.

When pure personality.—A debenture is within the Mortmain or Charitable Uses Act if it gives the holder an estate or interest in land, but not otherwise. A debenture issued under the Companies Clauses Acts (*e. g.* an ordinary railway debenture) does not give the holder any interest in the land of the railway, nor the right to possess or manage the railway, but merely the right to receive the surplus earnings, and it therefore appears that such a debenture is not within the Mortmain Act. *See Attree v. Hawe*, 9 Ch. D. 337, a decision on debenture stock; *Gardner v. London, Chatham and Dover Ry Co.*, L. R. 2 Ch. 201.

complete in itself; and the stock is capable of being transferred in any amounts, unless the regulations of the company, &c., forbid the transfer of amounts or fractions less than £10 or the like. Provision is sometimes made for issuing to each holder a certificate representing the amount of his stock, transferable by delivery, so as to entitle the bearer for the time being to the stock in question; such certificates generally have coupons for interest attached to them, and while they are outstanding the stock ceases to be transferable on the register. Perpetual debenture stock is stock which cannot be paid off. The principal statutes relating to debenture stock are the Company Clauses Acts, 1845 and 1863, the Commissioners Clauses Act, 1847, and the Local Loans Act, 1875. Debenture stock issued under these acts is not within the Mortmain or Charitable Uses Act. *Attree v. Hawe*, 9 Ch. D. 337.

DEBENTURES, (in a will). 14 Ch. D. 856.

DEBET.—He owes; he ought; it ought; there ought. Used principally in such maxims and phrases as the following—

Debet esse finis litium (Jenk. Cent. 61): There ought to be an end of law suits.

DEBET ET DETINET.—He oweth and detaineth. An action should be always in the *debet et detinet*, when he who makes a bargain or contract, or lends money to another, or he to whom a bond is made, brings the action against him who is bounden, or party to the contract and bargain, or unto the lending of the money, &c., as by the obligee against the obligor. But if it be brought by or against an executor for a debt due to or from the testator, this, not being his own debt, must be sued for in the *detinet* only.—*New N. B.* 119.

DEBET ET SOLET.—If a person sue to recover any right, whereof his ancestor was disseised by the tenant of his ancestor, then he uses the word *debet* alone in his writ, because his ancestor only was disseised, and the estate discontinued; but if he sue for anything that is now first of all denied him, then he uses *debet et solet*, because his ancestor before him, and he himself, usually enjoyed the thing sued for, until the present refusal of the tenant.—*Reg. Orig.* 140; *F. N. B.* 98.

Debet quis juri subjacere, ubi delinquit (3 Inst. 34): Every one ought to be amenable to the law of the place where he commits an offence.

Debile fundamentum fallit opus (3 Co. 231): A bad foundation ruins the work.

DEBIT.—The left-hand side of an account in a ledger, to which all items are carried that are charged to such account; also the balance of an account.

DEBITA FUNDI.—A Scotch law term for debts secured on land.—*Bell Dict.*

DEBITA LAICORUM.—Debts of the laity. Those which might be recovered in civil courts were so called.

Debita sequuntur personam debitoris: Debts follow the person of the debtor; *i. e.* may be sued for wherever the debtor can be found.

DEBITOR.—In civil and old English law, a debtor.

Debitor non præsumitur donare (Jur. Civ.): A debtor is not presumed to give. In other words, what he passes over to his creditor he is presumed to intend to have applied to the extinguishment of his indebtedness in the absence of proof of a clear intent to make a gift.

Debitorem pactionibus creditorum petitio nec tolli nec minui potest: The rights of creditors can neither be taken away nor diminished by agreements among the debtors.

DEBITRIX.—A female debtor.

DEBITUM.—Something due, or owing; a debt.

Debitum et contractus sunt nullius loci (7 Co. 3): Debt and contract are of no place; *i. e.* actions to enforce them may be brought anywhere.

Debitum in præsentì, solvendum in futuro: A debt due at present to be paid at a future time; *i. e.* a bond, note, or other instrument creating a present indebtedness payable on some future day.

DEBT.—

§ 1. In the strict sense of the word a debt exists when a certain sum of money is owing from one person (the debtor) to another (the creditor). (*F. N. B.* 119g; 2 Bl. Com. 464; Sm. Merc. L. 532.) Hence debt is properly opposed (1) to unliquidated damages (*See DAMAGES*, § 2); (2) to liability, when used in the sense of an inchoate or contingent debt; and (3) to certain obligations not enforceable by ordinary process (*See OBLIGATION*). Debt denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment.

Debts are of various kinds, according to their origin. *See CONTRACT*, § 1.

§ 2. *Statutory*.—Debts may be created under the provisions of various statutes, as in the case of penalties imposed by penal statutes, and payable to an informer or to the party grieved; debts in respect of calls on stock; debts for tolls payable under

statutes, and the like. (Leake Cont. 96.) By the provisions of the acts creating them, some of these debts have the same effect as debts created by specialty. *Infra*, § 4.

§ 3. **Of record.**—A debt of record is a debt proved to exist by the official records of a court of record. (2 Bl. Com. 485; Wms. Pers. Prop. 110. *See* COURT, § 2.) Among such debts are recognizances and statutes (*q. v.*), (as to debts of record due to the crown, *see* Chit. Prerog. 272,) but the most important are judgment debts, or debts created by the judgments, decrees, &c., of courts of record. (*See* JUDGMENT.) Thus, if A. injures B., his liability to recompense B. does not constitute a debt, but if B. brings an action and recovers judgment against him for \$500, this constitutes a judgment debt, and may therefore be proved for in the event of A. becoming bankrupt. Judgment debts have certain privileges, which, however, have been much curtailed in England, by recent legislation (*see* 2 Bl. Com. 465 *et seq.*; Wms. Real Prop. 84. An action cannot now be brought on a judgment; Birmingham Estates Co. v. Smith, W. N. (1880) 19. Otherwise in the United States), though some still remain. Thus, on the death of a person, his judgment debts must be paid in full by his executors out of his personal estate before any of his debts due on contract. (*See* ADMINISTRATION, § 2.) The judgment creditor also has various rights of enforcing his judgment by execution and attachment.

Debts created by contract are of two kinds, specialty and simple contract debts.

§ 4. **Specialty debts** are those created by deed or instrument under seal, *e. g.* a bond or covenant (*q. v.*) (2 Bl. Com. 465.) At common law there was an important distinction between debts of specialty in which the heirs were bound (*i. e.* where the person entering into the instrument expressly bound his heirs as well as himself), and those in which they were not, as debts of the former class had in some cases priority in payment out of the real estate of the debtor after his death over ordinary specialty debts, and all specialty debts had priority in payment out of the personal estate over simple contract debts;

thus, if a man owed £500 on bond and £500 on a bill of exchange, his personal estate being worth £700, the bond would have been paid in full, leaving only £200 to pay the other debt; but these distinctions no longer exist in England, in the case of persons dying on or after the 1st January, 1870. (Wms. Pers. Prop. 121.) This common law rule has been also modified by the statutes of the several States of the Union. Specialty debts, however, have still this advantage over simple contract debts, that they may be enforced by action within a longer period (generally twenty years), while actions on simple contracts can only be brought within six years from the right of action accruing.

§ 5. **Simple contract debts** are all debts except statutory debts and those secured by record or deed, *e. g.* the liability on a bill of exchange. Wms. Pers. Prop. 125.

§ 6. **Debts arising from privity of estate.**—Debts due on specialty or simple contract are sometimes said to arise from privity of contract, as opposed to those created by privity of estate. Thus, if A. devises land to B. charged with an annuity in favor of C., C.'s right to the annuity as against B. arises from privity of estate. *Whitaker v. Forbes*, L. R. 10 C. P. 583. *See* PRIVACY.

With reference to the privileges which they confer on the creditor, debts are of the following kinds—

§ 7. **Crown debts**, or those due to the crown, have been invested with special privileges by various acts of parliament, some of which apply exclusively to debts due from accountants to the crown, *i. e.* persons employed to collect and account for money due to the crown, hence called "accountants' debts." (Wms. Real Prop. 91, Pers. Prop. 111.) Examples of these privileges are, that they bind the debtor's land if duly registered; that on the death of the debtor his crown debts are payable in priority to other debts; and that if he becomes bankrupt and obtains his discharge he nevertheless remains liable for his crown debts. *Ib.*; Bankruptcy Act, 1869, § 49.

§ 8. **Secured debts** are those for which the creditor has some security in addition to the mere liability of the debtor. The term is somewhat vaguely used. Examples of secured debts in the strict sense are debts secured by mortgage, charge or lien, or by the collateral liability of some other

person (*see* GUARANTY); but we also speak of a debt being secured by a judgment, warrant of attorney, or by the bond, promissory note, &c., of the debtor, because the enforcement of the debt is thereby facilitated or made more certain. *See* SECURITY.

§ 9. Debts may also be *absolute* or *conditional*, payable at once or in future.

In the law of bankruptcy and insolvency, debt is used in various meanings.

§ 10. **Petitioning creditor's debt.**—A debt sufficient to maintain a petition for adjudication; in other words, a debt which enables the creditor to have the debtor adjudicated bankrupt, is called "a good petitioning creditor's debt." In England, such a debt must be one "which may be the immediate subject of an action," (*In re Muirhead*, 2 Ch. D. at p. 25,) and must not be less than £50, nor secured, unless the creditor is willing to give up the security or give credit for it. Bankr. Act, 1869, § 6.

§ 11. **Debt provable in bankruptcy.**—The term "debt provable in bankruptcy" excludes demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise (*e. g.* rights of action founded on tort), and also debts contracted with notice of an act of bankruptcy; but with this exception, "debt provable in bankruptcy" means any debt or liability, present or future, certain or contingent, existing before the order of adjudication, including liabilities to arise on events not likely to occur or not capable of occurring before the close of the bankruptcy, and liabilities capable of being valued or assessed by fixed rules, by a jury, or as matter of opinion. *Id.* § 31; *Robb. Bankr.* 185. *See In re Newman, Ex parte Brook*, 3 Ch. D. 494.

§ 12. **Preferential debts.**—Debts provable in bankruptcy are called "preferential debts" or "preferred debts" when they are payable in full before any other debts; they include taxes and rates, and wages or salaries due to clerks, servants, laborers or workmen. *Robb. Bankr.* 191.

§ 13. **Debt = aggregate of debts.**—Debt sometimes denotes an aggregate of debts; thus, the "bonded or mortgage debt" of a railroad company, means all the debts secured by bond or mortgage. *See* CHOSE IN ACTION; CONTRACT; CREDIT; DUE.

§ 14. **Action of.**—Debt is also extensively used as the name of a common law form of action for the recovery of a sum certain, or which can be made certain by computation.

DEBT, (defined). 20 Cal. 318, 350; 37 Cal. 524, 525; 28 Conn. 103, 108; 87 Ill. 385; 31 Md. 375, 390; 1 Abb. (N. Y.) Pr. N. s. 177; 13

Barb. (N. Y.) 188, 197; 2 Hill (N. Y.) 220; 7 N. Y. 9, 124.

DEBT, (what is a). 4 Dill. (U. S.) 66, 68; 8 Blackf. (Ind.) 246, 250; 30 Ind. 92, 93; 37 Iowa 642, 644; 2 Mo. App. 87, 93; 2 Yeates (Pa.) 54, 61.

— (what is not). 1 Mass. 134; 106 *Id.* 540, 542; 115 *Id.* 52; 2 Pick. (Mass.) 361; 26 Mo. 371; 56 N. H. 155; 2 Dutch. (N. J.) 398.

— (action of, lies when). 1 Mas. (U. S.) 243.

— (assignment of). 1 Bland (Md.) 524. — (distinguished from "demand"). 56 N. H. 155, 157; 2 Hill (N. Y.) 220.

— (in a bond). 52 Pa. St. 109, 110.

— (in a judgment). *Coxe* (N. J.) 93.

— (in a statute). 3 Scam. (Ill.) 193; 34 Mo. 573; 35 How. (N. Y.) Pr. 205; 7 Robt. (N. Y.) 137; 21 Ohio St. 353; L. R. 1 C. P. 658; 1 Q. B. D. 460, 463.

— (in attachment act). 3 Harr. (N. J.) 288.

— (in bankruptcy act). 6 Hill (N. Y.) 250; L. R. 1 H. L. 9.

— (in city charter). 17 N. Y. 110.

— (in common law procedure act). L. R. 8 C. P. 24.

— (in corporation act). 9 Abb. (N. Y.) Pr. 8, 14; 14 Barb. (N. Y.) 541; 17 N. Y. 458.

— (in exemption act). 57 Ala. 195.

— (in statute as to liabilities of corporate trustees). 8 Abb. (N. Y.) N. Cas. 389.

— (is correlative of "credit"). 1 Mass. 472.

— (note taken for). 5 Barb. (N. Y.) 398.

— (synonymous with "claim"). 12 Bankr. Reg. 498; 10 R. I. 261, 263.

— (under bankrupt act). 2 Den. (N. Y.) 74.

— (under homestead exemption act). 8 How. (N. Y.) Pr. 523, 527.

— (under insolvent debtors act). 2 Abb. (N. Y.) Pr. N. s. 262.

DEBT, CLAIM OR DEMAND, (in a statute). L. R. 9 Q. B. 383.

DEBT CONTRACTED, (a judgment in an action of tort is a). 2 Barn. & C. 762, 763.

— (in a statute). Wilberf. Stat. L. 125.

DEBT OR DAMAGES, (what is not). 97 Mass. 524, 530.

DEBT OR DAMAGES DEMANDED, (in a statute). 123 Mass. 378, 379; 8 Wend. (N. Y.) 538, 541.

DEBT OR DEFAULT OF ANOTHER, (in statute of frauds). 1 Hill (S. C.) 172.

DEBT OR DEMAND, (in a statute). 1 Moo. & P. 448, 451.

DEBTEE.—A person to whom a debt is owing; *i. e.* a creditor. (4 Ad. & E. 683.) *Tb* term is not common.

DEBTEE-EXECUTOR.—If a person indebted to another make his creditor or debtee his executor, or if such creditor obtain letters of administration to his debtor, he may retain sufficient to pay himself before any other creditors whose debts are of equal degree. (*Plowd.* 543.) To secure the general body of creditors when the estate is insufficient, a creditor to whom administration is granted may be compelled to

give a bond conditioned to pay *pro rata* each creditor according to his degree.—*Wharton*.

DEBTOR.—A person who owes a debt. In England, a person whose affairs are being liquidated by arrangement is called a "liquidating debtor." (See **LIQUIDATION**.) The status of discharged and undischarged liquidating debtors is similar to that of discharged and undischarged bankrupts. *Ex parte Williams*, L. R. 20 Eq. 743.

DEBTOR, (who is). 18 Wend. (N. Y.) 375.
 — (who is not). 2 Root (Conn.) 259, 266.

— (in a statute). 2 Day (Conn.) 70, 98.
 — (in absconding debtor act). 3 Halst. (N. J.) 180.

— (in attachment act). 2 Gr. (N. J.) 409.

— (naming a, in a will, effect of). 4 Wheel. Am. C. L. 438, 446.

— (under statute of frauds). 6 Stew. (N. J.) 139.

DEBTOR, ABSCONDING, (who is). 2 Root (Conn.) 133.

DEBTOR AND CREDITOR, (in a statute). 28 Conn. 103, 108; 9 Cush. (Mass.) 482, 483.

DEBTOR-EXECUTOR.—At law, if a testator appoints his debtor executor, the debt is released. In equity, however, the executor is accountable for the amount of his debt, as assets of the testator. *Wms. Ex.* (7 edit.) 1310 *et seq.*

DEBTOR'S ACT, 1869.—The English Statute 32 and 33 Vict. c. 62. Its provisions may be treated of under four heads. See *Middleton v. Chichester*, L. R. 6 Ch. 152; *Evans v. Bear*, L. R. 10 Ch. 76; *Marris v. Ingram*, 13 Ch. D. 338; *Metcalf's Case*, 13 Ch. D. 815.

§ 1. **Imprisonment for debt.**—It abolishes imprisonment for debt, except in certain cases (Sec. 4–10, as amended by the Debtor's Act, 1878), the most important of which are those of a defaulting trustee, and of a judgment debtor who is able but refuses to pay. The power of committal for non-payment of judgment debts is not restricted to debts of £50 or under, although there is a prevailing impression to this effect, apparently produced by a misleading marginal note to the act. See *ante*, p. 93, *n.*; **COMMITTAL**, § 4; **JUDGMENT**.

§ 2. **Absconding defendant.**—It abolishes arrest upon mesne process (See **ARREST**, § 3), but provides that when in any action in one of the superior courts in which, if brought before the act, the defendant would have been liable to arrest, the plaintiff proves at any time before final judgment that he has a good cause of action for £50 or upwards, that there is probable cause for believing that the defendant is about to leave England, and that his absence will materially prejudice the plaintiff in the prosecution of his action (*i. e.* that the presence of the defendant is absolutely required for purposes of evidence; Day Com. L. Pro. Acts 407; *Coe Pr.* 165), the judge may order the de-

fendant to be imprisoned until he gives security that he will not go out of England without the leave of the court. When the action is for a penalty (*q. v.*), proof that the defendant's absence will be prejudicial is not required, and the security is to the effect that any sum recovered against the defendant shall be paid or that he shall be rendered to prison. Sm. Ac. 102; Poll. C. C. Pr. 346. See **SECURITY**.

§ 3. **Fraudulent debtors.**—It provides for the punishment of fraudulent debtors, namely, persons who, having been adjudged bankrupt, or whose affairs are liquidated by arrangement, fail to discover or deliver to the trustee, or conceal or remove their property, books, &c., or make false statements of affairs, false entries in account books, &c., or leave England with property of a certain value, with the intent of defrauding their creditors or defeating the law, or obtain property on credit by false pretences, or make false representations for the purpose of obtaining the consent of their creditors to an agreement for composition, discharge, &c. Most of these offences are misdemeanors. Sections 11–23.

§ 4. **Warrants of attorney.**—It regulates the manner of executing and enforcing warrants of attorney, cognovits and orders for judgment. Sections 24–28.

DEBTOR'S SUMMONS.—A summons under the seal of a court of bankruptcy in England, giving notice to the person to whom it is addressed (the debtor), that unless he pays or compounds for a debt (not less than £50) due by him to a person therein named (the creditor) within a certain time, he will have committed an act of bankruptcy and will be liable to be adjudicated a bankrupt, unless he disproves the debt. Bank. Act, 1869, §§ 6, 7, Form 4.

A trader debtor's summons is one for service on a trader, and differs from a non-trader debtor's summons in giving the debtor a shorter time for compliance with its terms. See **ACT OF BANKRUPTCY**, § 5; **BANKRUPTCY**, § 4.

DEBTS, (defined). 21 Barb. (N. Y.) 469, 475; 54 Ill. 408.

— (what are). 30 Ga. 580, 590; 6 Metc. (Mass.) 203, 210; 4 Serg. & R. (Pa.) 505, 506; 1 Yeates (Pa.) 69, 70.

— (what are not). 54 Ill. 408, 412; 26 La. Ann. 694, 697.

— (devise in trust to pay). 6 Johns. (N. Y.) Ch. 294, 302.

— (devised by will to debtor). 2 Vern. 522.

— (due United States, priority of). 2 Cranch (U. S.) 358, 390; 5 *Id.* 289; 12 Pet. (U. S.) 102; 5 Wheel. Am. C. L. 300.

— (in statute of United States). 7 Wall. (U. S.) 71.

— (in a statute). 5 Day (Conn.) 193, 198; 1 Leigh (Va.) 430; 16 Hun (N. Y.) 65; 26 Ohio St. 334, 343; 1 Binn. (Pa.) 254, 261.

— (in a will). 8 Wheel. Am. C. L. 414; 9 Ch. D. 12; 1 Meriv. 541 *n.*, 543 *n.*; 3 *Id.* 434, 436; 1 Russ. & M. 255; 2 Vern. 141; 2 Ves. & B. 275.

— (in act of congress authorizing issue

of United States notes). 49 Barb. (N. Y.) 330, 336; 4 Robt. (N. Y.) 58.

DEBTS, (in bankrupt act). 7 Hill (N. Y.) 301; 10 Paige (N. Y.) 284.

—— (in statute relative to corporations). 9 N. W. Rep. 54.

—— (in statute relative to estates of deceased persons). 4 Abb. (N. Y.) Pr. 273; 4 Bradf. (N. Y.) 218, 219.

—— (in tax act). 53 Barb. (N. Y.) 547, 554; 36 How. (N. Y.) Pr. 487, 504; 37 N. Y. 344, 346.

—— (includes contracts and liabilities). 8 Ben. (U. S.) 357, 365.

DEBTS, ALL, (in a submission to arbitration). 1 Wheel. Am. C. L. 431.

DEBTS, ALL, DUE TO ME, (in a will). 8 Com. Dig. 469.

DEBTS, ALL MY LEGAL, (in a will). 2 Ves. 328, 329.

DEBTS AND ENGAGEMENTS, (in articles of co-partnership). 8 Pet. (U. S.) 355, 358.

DEBTS CONTRACTED, (equivalent to "dues owing"). 2 Story (U. S.) 432, 449.

DEBTS DUE, (in bankruptcy act). L. R. 9 Ch. 387.

DEBTS DUE ME AT MY DECEASE, (in a will). 9 Sim. 16.

DEBTS, DUES AND DEMANDS, (in a receipt). 1 Root (Conn.) 383, 384.

DEBTS, DUES, DAMAGES AND DEMANDS, (in deed of release). 10 Wend. (N. Y.) 473, 479.

DEBTS, EXCEPTING MY OUTSTANDING, (in a devise). 4 Wash. (U. S.) 631.

DEBTS, JUST, (in a will). 3 Mas. (U. S.) 178; 7 Conn. 172, 176; 9 Mass. 62; 10 Id. 137, 139; 3 Wend. (N. Y.) 503, 517; 13 Id. 578, 582; 1 Binn. (Pa.) 209, 211; 3 Hen. & M. (Va.) 89, 109; 5 Munf. (Va.) 223; 6 Id. 450.

DEBTS OR CREDITS, (in a statute). 7 Cal. 187, 203.

DEBTS THEN DUE, (in an assignment). 4 Rawle (Pa.) 307, 313.

—— (in articles of a banking association). 24 N. Y. 283.

DECANAL.—Pertaining to a deanery.

DECANATUS.—A deanery; a company of ten persons.—*Spel. Gloss.; Calv. Lex.*

DECANIA.—The jurisdiction or territory presided over by a dean.

DECANUS.—A dean (*q. v.*); an officer in command of ten persons. Thus, *decanus episcopi*, a dean presiding over ten clerks or parishes; *decanus friburgi*, a dean of a fribourg or tithing; *decanus in majori ecclesia*, a dean of a cathedral church; *decanus monasticus*, a dean of a monastery; *decanus militaris*, a captain of ten soldiers.

DECAPITATION.—The act of beheading. The mode of capital punishment formerly resorted to in cases of treason, and still employed in some countries.

DECAYED, (equivalent to "rotten"). 2 Serg. & R. (Pa.) 293, 297.

DECEASE, IN CASE OF HER, (in a will). 2 Ves. 501, 504.

DECEDENT.—A deceased person whose assets are in course of administration. The term applies equally to those dying testate and intestate.

DECEIT.—

§ 1. **Defined.**—Fraud, cheat, craft, or collusion used to deceive and defraud another.

§ 2. **Action for.**—An action upon the case for a deceit is a common law action to recover damages caused by the fraud or false affirmance by the defendant of a thing within his knowledge. (*See* Chit. Cont. 628; Broom Com. L. 340; Com. Dig., Action upon the Case for a Deceit, A. 10; Pasley v. Freeman, 3 T. R. 51; 2 Sm. Lead. Cas. 64.) This tort is now more commonly called "fraud or misrepresentation" (*q. v.*)

§ 3. **The writ of deceit** to reverse a judgment in a real action obtained by fraud or collusion was abolished by Stat. 3 and 4 Will. IV. c. 27, § 36. 3 Bl. Com. 405.

DECEIT, (defined). 61 Ill. 372, 373, 374.

—— (is more than a lie). 7 Wend. (N. Y.) 9, 18.

—— (means "cheating by false tokens"). Busb. (N. C.) L. 46, 48.

—— (when an action upon the case in the nature of, will lie). 3 T. R. 51, 52.

DECEIVED AND DEFRAUDED, (in an indictment). 1 Str. 8.

DECEM TALES.—*See* TALES.

DECEMVIRI LITIBUS JUDICANDIS.—In the Roman law, ten judges (five senators and five knights), appointed to act as judges in certain cases.—*Calv. Lex.*

DECENNA—DECENNARY.—A town or tithing, consisting originally of ten families of freeholders. Ten tithings composed a hundred. 1 Bl. Com. 114.

DECENNARIUS—DECENNIER.—One of the ten freeholders in a decenna, or decennary.

DECERN.—In Scotch law, to decree or adjudge.

DECESSUS.—In the civil and old English law, death, departure.—*Burrill.*

Decet tamen principem servare leges, quibus ipse servatus est: It

behoves indeed the prince to keep the laws by which he himself is preserved.

DECIES TANTUM.—A writ which lay against a juror, who had taken money of either party for giving his verdict, to recover "ten times as much" as the sum taken. 38 Edw. III. c. 12, repealed by 6 Geo. IV. c. 50, § 62.

DECIMATION.—(1) The punishing every tenth soldier by lot for mutiny or other failure of duty was termed *decimatio legionis* by the Romans. Sometimes only the twentieth man was punished (*vicesimatio*), or the hundredth (*centesimatio*). (2) Also tithing or tenth part.

DECIMÆ.—Tenths or tithes. See **TITHES**.

Decimæ debentur parochio: Tithes are due to the parish priest.

Decimæ de decimatis solvi non debent: Tithes are not to be paid from that which is given for tithes.

Decimæ de jure divino et canonica institutione pertinent ad personam (Dal. 50): Tithes belong to the parson by divine right and canonical institution.

Decimæ non debent solvi, ubi non est annua renovatio; et ex annuatis renovantibus simul semel (Cro. Jac. 42): Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.

DECIME.—A French coin of the value of the tenth part of a franc, or nearly two cents.—*Bowrier*.

DECISION.—A judgment of a court, i. e. the determination arrived at, not the paper commonly called the "judgment" docketed with the clerk, but the result reached by the court after argument or submission of the case.

DECISION, defined. 36 Wis. 434, 437.

— (of court, what consists of). 12 Minn. 437.

DECISION OF THE COLLECTOR, (in United States statute). 7 Ben. (U. S.) 251, 257.

DECISIONS, (in a statute). 29 Ind. 170.

DECISIVE OATH.—An oath resorted to in the civil law, where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary; which the adversary was bound to accept, or tender the same proposal back again, otherwise the whole was taken as confessed by him. Cod. 4, 1, 12.

DECLARANT.—A person who makes a declaration.

DECLARATION.—

§ 1. **Generally.**—A formal statement intended to create, preserve, assert or tes-

tify to a right. The following are the principal kinds of declarations—

§ 2. **Of use.**—A declaration of use or trust is a statement or admission—which in the case of land or chattels real must be written, (Stat. 29 Car. II. c. 3, § 7. Statute of Frauds)—that property is to be held to the use of or upon trust for a certain person. Thus, under the Statute of Uses land may be conveyed to A. to such uses as B. shall declare, and a declaration of the uses by B. takes effect accordingly by vesting the land in the person or persons in whose favor it is made. Deeds to declare uses were commonly employed before the abolition of fines and recoveries, which, being only adapted to convey the absolute estate, could not be made to answer the purposes of family settlements where a variety of substitutional limitations are required, and therefore the land was conveyed by fine or recovery to a given person, and the uses afterwards declared by a separate deed. (2 Bl. Com. 363.) Appointments of uses under powers are identical in effect with declarations of uses, but, strictly speaking, the latter term is only applied in the case of uses created by a fine or recovery.

§ 3. **Of trust.**—A declaration of trust is the ordinary mode of creating a trust when the trust property is already vested in the intended trustee. Thus, if A., being owner of property, wishes to create a trust in it for the benefit of B., without conveying it to another person, he executes a deed whereby he declares that he holds the property in trust for B.

§ 4. **Bankruptcy.**—A declaration of inability to pay debts is a declaration by a person admitting such inability; such a declaration, when signed and filed with the required formalities, constitutes, in England, an act of bankruptcy on which the debtor may be adjudicated a bankrupt. (Robs. Bankr. 136; Bankruptcy Rules, 1870, § 16.) Under the old law it was called a "declaration of insolvency." (2 Bl. Com. 488 n. (6); Stat. 4 Geo. IV. c. 16.) The commonest instance of a declaration of inability to pay debts is where a person presents a petition for liquidation, declaring that he is insolvent. Robs. Bankr. 137.

§ 5. **Evidence—Dying declarations—Declarations against interest.**—In the law of evidence, declaration is commonly used to denote a statement made (not on oath) by a deceased person and admissible in evidence contrary to the

general rule against derivative evidence. Thus, in a case of murder, the dying declaration of the murdered person is admissible; and so in a civil case is a declaration made by a deceased person against his proprietary or pecuniary interest, or on a question of pedigree, &c. *Best Ev.* 630.

§ 6. A **statutory declaration** is a written statement of facts which the person making it (the declarant) signs and solemnly declares to be true before a commissioner or magisterial officer. Making a false declaration is a misdemeanor. (Stat. 5 and 6 Will. IV. c. 62. *See AFFIDAVIT; OATH.*) Statutory declarations were introduced in England to prevent the frequent use of oaths in extra-judicial proceedings, and oaths are accordingly forbidden in these cases. Thus, the execution of a deed, if required to be proved extra-judicially, is properly proved by a statutory declaration. But as the act does not apply to the colonies, proof of the execution in England of a deed for use in one of the colonies is properly made by an extra-judicial affidavit.

§ 7. In a **judgment**, decree, or order, the declaration or declaratory part is that part which gives the decision or opinion of the court on the question of law in the case. Thus, in an action raising a question as to the construction of a will, the judgment or order declares, that according to the true construction of the will the plaintiff has become entitled to the residue of the testator's estate, or the like. *See Hunt. Eq.* 89. *See, also, DECLARATION OF TITLE ACT.*

§ 8. In **pleading**.—In common law practice a declaration is the first pleading delivered by the plaintiff. It is divided into counts (*q. v.*) and framed in technical language, presenting, in a methodical and logical form, the circumstances constituting the plaintiff's cause of action. *See PLEADING; VENUE.*

§ 9. In **Scotch practice**, the statement of an accused person taken before a magistrate.

DECLARATION, (defined). 1 *Chit. Pl.* 264.
—— (in pleading, what is sufficient). 2 *Gr. (N. J.)* 534.

DECLARATION OF INDEPENDENCE.—A State paper issued by the Congress, in the name of the people

of the United Colonies, on July 4th, 1776, setting forth various causes of complaint against the English government, and the grounds on which the right to dissolve relations with that power were claimed; and declaring that the United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, dissolved.

DECLARATION OF INTENTION.—The act by which an alien declares, in a formal manner, before a court of record, his *bona fide* intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty whereof at the time he may be a citizen or subject. This is one of the preliminary steps to naturalization (*q. v.*)

DECLARATION OF PARIS.—The name of a certain declaration respecting international maritime law, promulgated by leading European powers, at the congress of Paris in April, 1856. It embodies the following rules: (1) Privateering is and remains abolished; (2) the neutral flag covers enemy's goods, except contraband of war; (3) neutral goods, except contraband of war, are not liable to confiscation under a hostile flag; (4) blockades, to be binding, must be effective.—*Abbott.*

DECLARATION OF TITLE ACT, 1862 (25 and 26 Vict. c. 67).—This act provides that any person entitled to land in possession for an estate in fee-simple, whether absolutely or subject to incumbrances, &c., may apply to the High Court of Justice, by petition in the Chancery Division, for a declaration that he has a good title to the land, and the court, after causing the title to be investigated, may make a declaration *nisi*, and cause notice thereof to be given to all persons interested. If no one shows cause against the declaration within a certain time, the court may make a declaration that the petitioner has the title which he claims. (*Dan. Ch. Pr.* 1957.) It is believed that the act has not yet been put in force to any extent.

DECLARATION OF TRUST.—*See DECLARATION, §§ 2, 3.*

DECLARATIONS, (of party in possession of land). *Penn. (N. J.)* 706; 4 *Johns. (N. Y.)* 234.

DECLARATOR.—In Scotch law, an action whereby it is sought to have some right of property, or of status, or other right judicially ascertained and declared.—*Bell Dict.*

DECLARATORY ACTIONS.—Those wherein the right of the pursuer is craved to be declared; but nothing claimed to be done by the defender.—*Bell Dict.*

DECLARATORY JUDGMENT.—A declaratory decree or judgment is one which simply declares the rights of the parties, or expresses the opinion of the court on a question of law, without ordering anything to be done. *See DECLARATION*, § 7.

DECLARATORY PART OF A LAW.—That which clearly defines rights to be observed and wrongs to be eschewed.

DECLARATORY STATUTE.—One which declares or formally states what the existing law is on a given subject, so as to remove any doubts which may have been raised.

DECLARATORY STATUTE, (defined). 1 Bl. Com. 86.

DECLARATORY STATUTES, (what are). Dwar. Stat. 637.

DECLARE.—(1) To solemnly assert a fact before witnesses, *e. g.* where a testator declares, before witnesses, a paper signed by him to be his last will and testament. (2) To prepare, file and serve a declaration in an action at law. *See DECLARATION*, § 8.

DECLARE, (in a commitment). 5 Mod. 156, 162.

— (in a statute). 3 T. R. 539, 546.

— (in an oath). 2 Harr. (N. J.) 432.

DECLARE HIS INTEREST, (in articles of association). L. R. 6 H. L. 189.

DECLARED AND AGREED, (amount to a covenant). 19 Ves. 635, 638.

DECLARED, BE IT THEREFORE, (in a statute). Co. Litt. 290 b.

DECLARED BY LAW A PUBLIC HIGHWAY, (in a statute). 3 Serg. & R. (Pa.) 273, 274.

DECLINATORY PLEA.—A plea of sanctuary, also pleading of benefit of clergy before trial or conviction. Abolished by 6 and 7 Geo. IV. c. 28, § 6.

DECLINATURE.—In Scotch law, a plea to the jurisdiction on the ground of interest in the judge.—*Bell Dict.*

DECOCTOR.—In the Roman law, a bankrupt; a spendthrift; a squanderer of public funds.—*Calv. Lex.*

DECOLLATION.—The act of beheading. *See DECAPITATION.*

DECOY.—A place made for catching wild water-fowl. As to the rights of an owner of such a place, *see* 11 Mod. 74.

DECOYS, (defined). 1 Chit. Gen. Pr. 9, 188.

DECREE.—*LATIN: decretum.*

§ 1. The judgment or sentence of a court of equity or admiralty; in English law, an order of the court pronounced on the hearing of a suit. A decree in equity is either final or interlocutory, in which latter case the "further consideration" (*q. v.*) is reserved. The decree usually contains a declaration (*q. v.* § 7), followed by the ordering or mandatory part. *See generally* as to decrees, Hunt. Eq. 84; Dan. Ch. Pr. 850 *et seq.*; Seton Dec. *passim*.

§ 2. Under the present English practice, what was formerly called the decree is now usually represented by the judgment (*q. v.*); in administration actions and actions for accounts, &c., it sometimes takes the form of an order. *See Rules of Court*, xv., xxxiii. *See, also*, ENROLMENT; FURTHER CONSIDERATION; HEARING; MOTION FOR DECREE.

§ 3. **Decree nisi.**—In matrimonial suits in the Probate, Divorce and Admiralty Division of the English High Court, every decree for dissolution or nullity of marriage is in the first instance a decree nisi, *i. e.* provisional, and cannot be made absolute until after the expiration of a certain time (generally six months), during which period any person is at liberty to show cause to the court why the decree should not be made absolute, by reason of its having been obtained by collusion, or of material facts not brought before the court; and, on cause being so shown, the court deals with the case by making the decree absolute, or by reversing it or by requiring further inquiry. (Browne Div. 298; 23 and 24 Vict. c. 144, § 7; 29 Vict. c. 32, § 3; 36 Vict. c. 31, § 1.) It is not now necessary to make a motion to have the decree made absolute. Divorce Rules, July, 1880.

§ 4. **Court of Arches.**—In the Court of Arches (*q. v.*), a suit is commenced by a process called a "decree," which is the same thing as a citation (*q. v.*) (Phillim. Ecc. L. 1253; *see VIIS ET MODIS*). A final interlocutory decree is the same thing as a definitive sentence (*q. v.*), except that it is under the hand of the registrar, and not of the judge. *Ib.* 1260.

§ 5. **In Scotch law.**—The final judgment or sentence of the court decisive of the questions at issue.

§ 6. **In legislation.**—In France, and some other countries, statutory enactments and proclamations of the sovereign having the force of law, are sometimes called "decrees."

DECREE, (defined). 28 Cal. 75, 85.

— (what is not). 12 Ves. 311, 315.

DECREE, (for a sale of mortgaged premises, is a final decree from which an appeal will lie). 3 Cranch (U. S.) 179.

DECREE, FINAL, (what is not). 11 Wheat. (U. S.) 429.

— (under a statute). 1 Cow. (N. Y.) 691.

DECREE OF FORECLOSURE OF A MORTGAGE, (is a final decree). 13 Pet. (U. S.) 6.

DECREE DATIVE.—In the Scotch law, an order of a probate court appointing an administrator.

DECREE IN ABSENCE.—A Scotch law term equivalent to our "judgment by default," or "*decree pro confesso*."

DECREE OF CONSTITUTION.—In the Scotch law, a decree ascertaining the extent of a debt.

DECREE OF FORTHCOMING.—In the Scotch law, a decree made after an arrestment (*q. v.*) ordering the debt to be paid or the effects of the debtor to be delivered to the arresting creditor.—*Bell Dict.*

DECREE OF REGISTRATION.—In the Scotch law, a proceeding giving immediate execution to the creditor; similar to a warrant of attorney to confess judgment.

DECREE, (interlocutory and final). 12 Johns. (N. Y.) 500; 17 *Id.* 558; 5 Paige (N. Y.) 303; 8 Wend. (N. Y.) 219, 224, 242; 14 *Id.* 539, 543.

DECREET.—In the Scotch law, a decree (*q. v.* § 5) or award. Thus, *decreet absolutor*, one deciding in defendant's favor; *decreet arbitral*, the award of an arbitrator; *decreet cognitionis causæ*, one pronounced when a creditor brings his action against the heir of his debtor in order to constitute the debt against him and attach the lands, and the heir appears and renounces the succession; *decreet condemnator*, one deciding in plaintiff's favor; *decreet of exoneration*, one discharging trustees, executors, factors, tutors, and others; *decreet of locality*, one dividing and proportioning among the heirs, a stipend modified to a minister; *decreet of modification*, one which modifies a stipend to a minister, but does not divide or apportion it among the heirs; *decreet of valuation of teinds*, a sentence of the Court of Sessions (who are now in the place of the commissioners for the valuation of teinds) determining the extent and value of teinds.

DECRETA.—In the Roman law, judicial sentences given by the emperor as supreme judge.

Decreta conciliorum non ligant reges nostros (Mo. 906): The decrees of councils bind not our kings.

DECRETAL ORDER.—In chancery practice, a decretal order is an order made on motion or otherwise, not at the hearing of the cause (*i. e.* not on motion for de-

cree), but having the effect of a decree. Hunt. Eq. 85.

DECRETALS.—See CANON LAW.

Decretum est sententia lata super legem: A decree is a sentence made upon the law.

DECRETUM GRATIANI.—See CANON LAW.

DECROWNING.—The act of depriving of a crown.

DECRY.—To cry down; to deprive of credit. "The king may at any time *decry*, or cry down any coin of the kingdom, and make it no longer current." 1 Bl. Com. 278.

DECURIO.—In the Roman law, one of the chief men or senators in the provincial towns. The *decuriones*, taken together, had the entire management of the internal affairs of their towns or cities, with powers resembling in some degree those of our modern city councils. (Spenc. Eq. Jur. 54; *Calv. Lex.*)—*Bouvier*.

DEDBANA.—An actual homicide or manslaughter.

DEDI.—I have given. The technical granting word in deeds when written in Latin.

DEDI ET CONCESSI.—I have given and granted. The operative words in old Latin grants, &c.

DEDICATE.—To appropriate land to some public use, as to make a private way public by acts evincing an intention to do so.

DEDICATED, (synonymous with "located"). 122 Mass. 60, 64.

DEDICATED TO PUBLIC USE, (defined). 1 Wils. 107, 110.

— (in a statute). 4 Car. & P. 377.

DEDICATION.—The appropriation by the owner of private land to public use, *e. g.* where a person expressly or tacitly throws open for public use a road on his land, and the public assent to or avail themselves of the dedication. (2 Sm. Lead. Cas. 146, 150.) For instance, if a man build a double row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is instantly a highway. (*Woodyer v. Hadden*, 5 Taunt. 125, cited in 2 Sm. Lead. Cas. 146, notes to *Dovaston v. Payne*.) A dedication will be implied from an uninterrupted use by the public of the right of way claimed (*R. v. Lloyd*, 1 Campb. 260,

cited *ibid.*), even for a few years. Shelf. R. P. Stat. 63.

§ 2. **Limited and qualified.**—A dedication may be limited in point of time, so that the highway is useable by the public at certain times only; or may be qualified so as to make the use of the highway subject to a right of user by the owner of the soil for other purposes, or subject to an existing obstruction or excavation, which, if made after the dedication, would have been a nuisance. 2 Sm. Lead. Cas. 148, citing *Fisher v. Prowse*, 2 Best & S. 770. See HIGHWAY; WAY.

DEDICATION, (defined). 12 Ga. 239, 244; 1 Beas. (N. J.) 562; 23 Wis. 416, 420.

— (what is). 1 Bond (U. S.) 81; 9 Cranch (U. S.) 292, 331; 10 Pet. (U. S.) 662, 712; 1 Wall. (U. S.) 109; 21 La. Ann. 244, 245; 27 Mo. 211; 5 Vr. (N. J.) 87; 8 Wend. (N. Y.) 85, 105; 11 *Id.* 487, 493; 12 *Id.* 172; 19 *Id.* 128, 131; 20 *Id.* 96, 97, 111, 116; 1 Whart. (Pa.) 469, 472; 16 Serg. & R. (Pa.) 390, 396; 22 Tex. 94; 3 Bing. 447; 1 Campb. 260, 263; 2 Smith 262, 269; 2 Str. 1004.

— (what is not). 22 Wend. (N. Y.) 425, 433; 4 Barn. & Ald. 447; 5 *Id.* 454; 4 Barn. & C. 574, 591; 1 Dow. & Ry. 20; 6 *Id.* 572, 590; 2 Nev. & M. 583, 595; 5 Taunt. 125, 136.

— (how made). 6 Pet. (U. S.) 431, 498.

— (of highway). 87 Ill. 64.

— (of lands). 14 Barb. (N. Y.) 511; 4 Cow. (N. Y.) 542; 1 Hill (N. Y.) 189, 191; 6 *Id.* 407; 7 Johns. (N. Y.) 106; 4 Paige (N. Y.) 510; 6 *Id.* 271.

— (of literary work). 7 West L. J. 49.

— (of manuscript). 5 McLean (U. S.) 32.

— (of road). 2 Barn. & Ad. 681.

— (of way). 2 Pick. (Mass.) 162, 164.

— (partial, what is). 7 Barn. & C. 257, 260.
— (to public uses, effect of). 4 Vr. (N. J.) 13.

DEDICATION-DAY.—The feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighboring villages, who usually came thither; and such assemblies were allowed as lawful. It was usual for the people to feast and to drink on those days.—*Cowell*.

DEDIMUS ET CONCESSIMUS.—The plural of *dedi et concessi* (q. v.). These were the operative words of grant in *Magna Charta* (q. v.).

DEDIMUS POTESTATEM.—A writ sued out of Chancery, empowering the persons to whom it is directed to administer the oath of allegiance and a judicial oath to a person who has been newly appointed a justice of the peace. (Stone Just. 5.) The writ was also formerly used to appoint special commissioners in the country

to take a conusance of a fine, or to swear an answer to a bill in equity. (2 Bl. Com. 351; 3 *Id.* 447.) And in still earlier times it was required when a person wished to appoint an attorney to represent him in court (*dedimus postatem de attorney faciendo*), because the law required the parties to appear in court personally.—*F. N. B.* 25 a.

DEDITION.—The act of yielding up anything; surrendry.

DEDITITII.—In the Roman law, criminals made freedmen after being branded in the face or on the body.—*Calv. Lex.*

DEDUCTION, (in a grant). 2 Doug. 624.

DEDUCTION, WITHOUT ANY, ON ACCOUNT OF TAXES, (in a lease). 5 Binn. (Pa.) 505, 506.

DEED.—Deed seems formerly to have signified a writing under seal not concerning land, as opposed to a charter. It is obviously derived from *do*, in the sense of execute, possibly in imitation of the Norman-French *set, fait*.

§ 1. "A deed is a writing or instrument written on paper or parchment, sealed and delivered, to prove and testify the agreement [*i. e.* the intention] of the parties whose deed it is, to the things contained in the deed." (Shep. Touch. 50.) A deed cannot be written on wood, leather, cloth, stone, or any other material than paper or parchment. (Co. Litt. 35 b, 229 a.) A deed differs from other instruments not merely in its formalities (as to which see DELIVERY; EXECUTION; REGISTRATION; SEAL; STAMP), but also in its effects (as to which see BOND; CONTRACTS, § 9; COVENANT; ESTOPPEL; LIMITATION; MERGER.)

§ 2. **Deed poll.**—All deeds are either poll or indented. A deed poll is a deed made by one person or by several persons in the same interest, as where several persons appoint an attorney by deed, or bind themselves by a bond. A deed poll is so called because the paper or parchment is polled or cut even, as opposed to a deed indented. (Co. Litt. 229 a; Shep. Touch. 50.) In the old writers deed is generally used in the sense of deed poll. Co. Litt. 229 b.

§ 3. **Form and requisites.**—A deed generally consists of the following parts, or some of them: The premises, the habendum, the tenendum, the reddendum, the conditions, and the covenants. Shep. Touch. 52, 74; Co. Litt. 229 b. See the various titles.

The requisites of a deed are—(1) Sufficient parties and a proper subject of assur-

ance. (2) The deed must not rest on an illegal consideration; and to hold good against creditors it must rest on a valuable consideration. (3) It must be written, engrossed, printed or lithographed, or partly written or engrossed, and partly printed or lithographed in any character or in any language, on paper, vellum, or parchment, since these materials best unite the two qualities of durability and difficulty of concealing alteration or erasure. (4) The language employed should be sufficient in point of law, intelligible without punctuation, and clear without the aid of stops or parentheses.

§ 4. Deeds are essential to the validity of certain legal acts, especially for almost all conveyances and leases of real property (1 Steph. Com. 481; Stat. 8 and 9 Vict. c. 106), and for the alienation of chattels where there is no contract of sale or delivery of possession. (Wms. Pers. Prop. 37. *See* BILL OF SALE.) Bonds, powers of attorney, and a few other instruments, are in practice always made by deed. *See* ESCROW.

§ 5. Deed is also used in the expression "in deed" to signify that a thing has been really or expressly done, as opposed to "in law," which means that it is merely implied or presumed to have been done (*see* CONDITION, §§ 4, 5); therefore, when we say that a surrender "in deed" of an estate in land must be made by deed, the word "deed" is used in different senses.

As to deeds indented, *see* INDENTURE. As to deeds acknowledged, *see* ACKNOWLEDGMENT, § 1. As to deeds enrolled, *see* BARGAIN AND SALE, § 2; DISENTAILING DEED; ENROLMENT.

DEED, (defined). 1 Gr. (N. J.) Ch. 525; 1 Harr. (N. J.) 324; 2 Bing. 413; 2 Bl. Com. 294; L. R. 2 C. C. R. 27.

— (what is a). 1 Car. & P. 421; 10 Moo. 1.

— (what is not). 6 Barn. & C. 665, 669; 9 Dow. & Ry. 678; 2 Ld. Raym. 760, 967.

— (agreement to execute). 12 Johns. (N. Y.) 436.

— (in a statute). 5 Mass. 438, 472.

— (in an agreement). 14 Ind. 12, 16.

— (in married woman's act). 60 Ind. 566.

— (in statute relative to forgery). L. R. 2 C. C. R. 22.

— (when includes mortgage). 44 Cal. 100, 104; 25 Mich. 388, 391.

— (when possession will raise presumption of). 1 Cr. (N. Y.) 90.

DEED OF COVENANT.—Covenants are sometimes entered into by a separate deed, for title, or for the indemnity of a purchaser or mortgagee, or for the production of title deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case.

DEED OF SETTLEMENT.—In England a joint stock company formed before November 1st, 1844, was usually formed by a deed of settlement, constituting certain persons trustees of the partnership property, and containing regulations for the management of its affairs. It was sometimes accompanied by a private act of parliament or by letters-patent. (Sm. Merc. L. 62. *See* COMPANY.) Companies registered after November 1st, 1844, under the 7 and 8 Vict. c. 110, and before 1862, were regulated by deeds of settlement (*Id.* 67), in the same way as companies formed under the Act of 1862 are regulated by a memorandum and articles of association (*q. v.*)

DEED OF THE PREMISES, (in an agreement). 13 Johns. (N. Y.) 359, 363.

DEED, GOOD AND SUFFICIENT, (in an agreement). 6 Halst. (N. J.) 110; 2 Johns. (N. Y.) 595.

DEED POLL.—*See* DEED, § 2.

DEED TO DECLARE USES.—A deed made subsequent to a fine or common recovery, explaining its purpose.

DEED TO LEAD USES.—A deed made previous to a fine or common recovery, explaining its purpose.

DEED, WARRANTY, (in an agreement). 14 Barb. (N. Y.) 418.

DEEMED, (defined). 14 Blatchf. (U. S.) 74, 77.

— (in a statute). 2 Gr. (N. J.) 461.

DEEMED PROPER, (in a statute). 7 Barn. & C. 266, 276.

DEEMSTERS.—*SAXON:* *dema*, a judge or umpire.

Judges in the Isle of Man and in Jersey, who, without process or any charge to the parties, decide all controversies in those islands; they are chosen from among the parties themselves. Cam. Brit. and 4 Inst. 284.

DEEPLY INDEBTED, (construed). 102 Mass. 272, 275.

DEER.—*See* ANIMAL, § 2.

DEER-FALD.—A park or fold for deer.

DEER-HAYES.—Engines or great nets made of cord to catch deer. 19 Hen. VIII. c. 11.

DEFALCATION.—(1) The failure of one holding a position of trust to pay over

money received by him. (2) The reduction of a claim or demand made by one contracting party, by deducting a counter-claim presented by the other.

DEFALCATION OR DISCOUNT, (in a promissory note). 3 Harr. (N. J.) 224.

DEFALCATION, WITHOUT (in a promissory note). 9 Serg. & R. (Pa.) 193, 196; 8 Wheel. Am. C. L. 34.

DEFAMATION.—The act of maliciously making a false and disparaging statement concerning a person. By "disparaging" is meant that the statement is calculated to expose him to contempt, ridicule or public hatred, or to injure his character or credit, or to cause him to be feared or avoided, or the like. (See Underh. Torts 83.) Defamation is either libel or slander (*q. v.*) See, also, MALICE; PRIVILEGE.

DEFAULT.—

§ 1. The neglect or non-performance of a duty.

§ 2. In practice, default "is legally taken for non-appearance in court" (Co. Litt. 259b); but at the present day it means the failure to take any step required by the rules of procedure. Thus, if a party fails to appear or to file or serve a pleading within the proper time, he is in default, and a judgment given against him in consequence is called "judgment by default." Such a judgment may be set aside by the court on proper terms, if it appears that the default was unintentional. See WRIT OF INQUIRY.

DEFAULT, (in a covenant). 3 East 491.

— (in a lease). 1 Barn. & Ad. 715, 720.

— (in a promissory note). 2 Hall (N. Y.) 431.

— (in an agreement). 5 Bos. & P. 258, 265.

— (in practice act). 29 Iowa 245.

DEFAULT OF ISSUE, (in a devise). 1 W. Bl. 645.

DEFAULT OF SUCH ISSUE, (in a marriage settlement). 2 Atk. 89, 92.

— (in a will). 7 East 521, 527; 11 Id. 594; 3 Mau. & Sel. 25, 29; 7 Mod. 195; 3 T. R. 484, 491.

DEFAULT OF SUCH SONS, (in a will). 1 Bos. & P. 250, 258.

DEFAULTER.—One who makes default.

DEFEASANCE.—NORMAN-FRENCH: *defere*, to undo. Britt. 216b.

This term, "in a large sense, doth some-

times signify (1) a condition annexed to an estate; and sometimes (2) the condition of an obligation, made with and annexed to the obligation at the time of making thereof" (Shep. Touch. 396); but it is more properly applied (3) to a condition relating to a deed, such as an obligation, mortgage, recognizance, or the like, but contained in a separate instrument, whether entered into at the same time as the deed itself, or afterwards. On the condition or defeasance being performed by the obligor or recognisor, the deed is made void. A conveyance of the freehold of land at common law (*e. g.* by feoffment) could not be defeated by a defeasance unless it was executed at the same time as the conveyance. (Co. Litt. 236b.) And in this manner mortgages were in former times usually made, the mortgagor enfeoffing the mortgagee, and he at the same time executing a deed of defeasance, whereby the feoffment was rendered void on repayment of the borrowed money at a certain day. (2 Bl. Com. 327.) Almost the only instances of defeasances at the present day occur in the case of cognovits and warrants of attorney (*q. v.*)

§ 2. Defeasance is also used to describe the effect of a conditional limitation in defeating or putting an end to an estate. See LIMITATION.

DEFEASANCE, (defined). 43 Me. 371, 373; 2 Gr. (N. J.) 364; 2 Bl. Com. 327; 1 Chit. Gen. Pr. 321; 2 Saund. 47 n. (1).

— (what is). 2 Mass. 493, 497; 12 Id. 455, 463; Willes 107, 145.

— (what is not). 4 Mass. 443, 445; 1 Ld. Raym. 419.

— (distinguished from a "condition"). 2 Bl. Com. 342.

— (to bond, separate covenant). 2 Halst. (N. J.) 89.

DEFEASIBLE.—An estate or interest in property is said to be defeasible when it is subject to be defeated by the operation of a condition subsequent or conditional limitation. Thus, the estate of a mortgagee is defeasible, because the mortgagor has the right to redeem, and an estate followed by a conditional limitation is defeasible on the performance of the condition. (For examples of conditions, see that title, also, LIMITATION.) The term may also be applied to interests given by

will subject to being divested (*see* DIVEST), and to an estate or interest subject to a power of revocation. *See* POWER.

DEFEAT.—*See* DEFEASANCE.

DEFEAT—HINDER, (creditors, what is). 5 Bush (Ky.) 579.

DEFECT.—Deficiency; insufficiency; the absence of something required by law. In pleading, defects in matters of form only, are cured by verdict (*see* AID, § 2), but defects in matters of substance are fatal, as they directly affect the right to recover.

DEFECT OF PARTIES DEFENDANT, (what is not). 40 Wis. 373, 375.

DEFECT OR WANT OF REPAIR, (in a statute). 13 Gray (Mass.) 59, 63.

DEFECTUS SANGUINIS.—Failure of issue.

DEFENCE.—**NORMAN-FRENCH:** *defender*, to deny *il defendera forsque tort et force*, he shall only deny the wrong and the force, Litt. § 195, so that defence originally signified merely a denial. 3 Bl. Com. 296; Hargrave's note to Co. Litt. 127 b.

§ 1. **Self-defence.**—The right of private or self-defence is the right which every person has to inflict death or bodily harm in order to defend himself or any other person from unlawful violence, provided that he inflicts no greater injury than he in good faith and on reasonable grounds believes at the time to be necessary. Steph. Cr. Dig. 124; 3 Steph. Com. 241.

§ 2. **In pleading**, a defence is a reason given by the defendant, respondent, prisoner or other person against whom an action or proceeding is brought, tending to show that there is no case against him.

§ 3. In ordinary actions, defences are of innumerable variety, both of law and of fact, and are put forward either by answer, plea or demurrer (*q. v.*) Some of the old defences at common law had short names, which are still preserved, *e. g.* "not guilty," "non assumpsit," "nil debet," &c. *See, also*, AMENDS; CONFESSION AND AVOIDANCE; PLEADING; TRAVERSE.

§ 4. **In equity**, the matters of defence which may be relied on are in their nature susceptible of two divisions, viz.: (1) those which are dilatory, which merely delay or suspend or obstruct the suit without touching the merits, until the impediment or obstacle insisted on is removed;

and (2) those which are peremptory and permanent, and go to the entire merits of the suit. The modes of defence are four, viz.: (1) by demurrer, by which the defendant demands the judgment of the court, whether he should be compelled to answer the bill or not; (2) by plea, whereby he shows some cause why the suit should be dismissed, delayed or barred; (3) by answer, which, controverting the case stated by the bill, confesses and avoids it; or traverses and denies the material allegations in the bill; or admitting the case made by the bill, submits to the judgment of the court upon it; or relies upon a new case, or upon new matter stated in the answer, or upon both; (4) by disclaimer, which seeks at once a determination of a suit, by the defendant's disowning all right and interest in the matter sought by the bill. All or any of these modes of defence might be joined. Story Eq. Pl. 345.

§ 5. **In criminal matters**, when a prisoner is brought to the bar and arraigned he either confesses the charge, stands mute, or does not answer directly to the charge, which may be entered as a plea of not guilty, or pleads to the jurisdiction, or in abatement, or demurs, or pleads specially in bar, or, generally, that he is not guilty. In addition to these several modes of defence, there were formerly what were called "declinatory pleas"—the plea of sanctuary and the plea of clergy—both now abolished. *See, also*, ARREST OF JUDGMENT; DEMURRER; PLEA.

§ 6. **Matrimonial suits.**—In matrimonial suits, in England, defences are divided into *absolute*, *i. e.* such as being established to the satisfaction of the court are a complete answer to the petition, so that the court can exercise no discretion, but is bound to dismiss the petition; and *discretionary*, or such as being established leave to the court a discretion whether it will pronounce a decree or dismiss the petition. Thus, in a suit for dissolution, condonation is an absolute, adultery by the petitioner a discretionary, defence. Browne Div. 86.

§ 7. **County court.**—In English county court practice, defences of set-off, infancy, coverture, statute of limitations, and discharge under the bankruptcy acts, are called "special defences," and a defendant cannot set up one of them unless he gives the registrar notice of his intention to do so (9 and 10 Vict. c. 95, § 76; Poll. C. C. Pr. 100), and files a notice with a concise statement giving the material facts involved in the defence.

§ 8. **Ecclesiastical courts.**—The defence in ecclesiastical courts may be called the "answer," in which the defendant denies, extenuates or justifies.

DEFENCE ACTS.—The English defence acts are the Acts 5 and 6 Vict. c. 94; 23 and 24 Vict. c. 112; and 36 and 37 Vict. c. 72, by which certain lands are vested in the Secretary of State for war, to be used for military purposes. See *Hawley v. Steele*, 6 Ch. D. 521.

DEFENCE, (in a statute). 5 C. P. D. 34; 16 Abb. (N. Y.) Pr. 235; 8 How. (N. Y.) Pr. 441; 10 *Id.* 148; 10 N. Y. Leg. Obs. 14; 4 Sandf. (N. Y.) 668.

DEFEND.—To forbid or deny; to oppose or resist; to contest an action, suit or other legal proceeding.

DEFENDANT.—Formerly, one against whom a personal action was brought, the word "tenant" being the corresponding term in real actions. Now, however, in America, the word is used to denote a person required to make answer in any action or suit, criminal as well as civil, while in England its meaning seems to be one against whom an action, information, or other civil proceeding (other than a petition) is brought, including summary proceedings before magistrates and justices for the recovery of penalties. See **COUNTER-CLAIM**; **PRISONER**; **RESPONDENT**.

DEFENDANT, (in a judgment). 8 Dana (Ky.) 41, 43.

— (in a statute). 118 Mass. 470, 473; 122 *Id.* 8, 11.

DEFENDANT IN THE ACTION, (a garnishee is a). 16 Wis. 169, 173.

DEFENDANT, THE SAID, AND THE SAID PLAINTIFF, (in pleadings). 6 Taunt. 121, 406.

DEFENDANT IN ERROR.—The party against whom a writ of error is sued out.

DEFENDANTS, (who are). 1 P. Wms. 593.

DEFENDANTS AND PLAINTIFFS, (what includes). 9 Ill. 20, 24.

DEFENDANTS' COSTS, (in a judgment). Penn. (N. J.) 747.

DEFENDANTS SAID, (in a declaration). 6 Pet. (U. S.) 1, 6.

DEFENDEMUS.—A word used in grants and donations, which binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given other than what is contained in the deed of donation. —*Bract.* l. 2, c. 16.

DEFENDER.—The Scotch term for defendant.

DEFENDER OF THE FAITH.—A peculiar title belonging to the sovereign of England, as that of "Catholic" to the king of Spain, and that of "Most Christian" to the king of France. These titles were originally given by the popes of Rome; and that of *Defensor Fidei* was first conferred by Pope Leo X. on King Henry VIII., as a reward for writing against Martin Luther; and the bull for it bears date *quinto Idus Octob.*, 1521.—*Encyc. Lond.*

DEFENDERE SE PER CORPUS SUUM.—To offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. III. § 46. See **BATTEL**.

DEFENDERE UNICA MANU.—To wage law; a denial of an accusation upon oath. See 3 Bl. Com. 341; 3 Steph. Com. 424.

DEFENERATION.—The act of lending money on usury.

DEFENSA.—A park or place fenced in for deer.—*Cowell*.

DEFENSE.—See **DEFENCE**.

DEFENSE AU FOND END DROIT.—In French and Canadian law, a demurrer.

DEFENSE AU FOND EN FAIT.—The general issue.

DEFENSIVA.—A lord or earl of the marches, who was the warden and defender of his country.—*Cowell*.

DEFENSIVE ALLEGATION.—The mode of propounding facts relied upon as a defence by a defendant in the ecclesiastical courts. He is entitled to the plaintiff's answer upon oath, and may thence proceed to proofs as well as his antagonist. 3 Steph. Com. (7 edit.) 315.

DEFENSIVE WAR.—A war in defence of, or for the protection of national rights. It may be *defensive* in its principles, though *offensive* in its operations. 1 Kent Com. 50 n.

DEFENSO.—That part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso*: so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was enclosed or fenced, to secure the growth of the underwood from the injury of cattle.—*Cowell*.

DEFENSOR.—(1) In the canon law, the advocate or patron of a church.—*Spel. Gloss.* (See **ADVOCATI ECCLESIE**.) (2) In the civil law, a defender or advocate; a tutor or guardian.—*Calv. Lex.* (3) In old English law, the defendant; a warrantor.—*Bract.* 141 b, 257 b. A protector or guardian.—*Spel. Gloss.*

DEFENSOR CIVITATIS.—An officer under the Roman empire, whose duty it was to protect the people against the injustice of the magistrates, the insolence of the subaltern officers, and the rapacity of the money-lenders. He had the powers of a judge, with jurisdiction of pecuniary causes to a limited amount, and the lighter species of offences. He had also the care of the public records, and powers similar to those of a notary in regard to the execution of wills and conveyances.—*Burrill*.

DEFENSUM.—An enclosure of land; any fenced ground. See **DEFENSO**.

Deficiente uno sanguine non potest esse hæres (3 Co. 41): One blood being wanting, he cannot be heir. But see 3 and 4 Will. IV. c. 106, § 9, and 33 and 34 Vict. c. 23, § 1.

DEFICIT.—Something wanting—generally, in the accounts of one entrusted with money, or in the money received by him.

DEFINE, (defined). 36 Mich. 447, 452.

DEFINITE FAILURE OF ISSUE, (defined). 50 Ind. 542, 546.

DEFINITE SENTENCE, (what is). 1 Watts (Pa.) 255, 257.

DEFINITION.—**LATIN:** *de*, and *fnis*, a bound or limit.

A description of a thing by its properties; an explanation of the meaning of a word or term.—*Webster*. The process of stating the exact meaning of a word by means of other words.—*Worcester*.

DEFINITIVE, OR FINAL DECREE, (what is not). 84 Pa. St. 238, 239.

DEFINITIVE SENTENCE.—The final judgment or sentence of an ecclesiastical court, in opposition to a provisional or interlocutory judgment. But see *United States v. The Peggy*, 1 Cranch (U. S.) 103.

DEFORCEMENT—DEFORCEOR—DEFORCIANT.—Deforcement is where a man wrongfully holds lands to which another person is entitled. It therefore includes disseisin, abatement, discontinuance, and intrusion (Co. Litt. 277 b, 331 b), but it is applied especially to cases, not falling under those heads, where the person entitled to the freehold has never had possession; thus, where a lord has a seignory, and lands escheat to him *propter defectum sanguinis*, but the seisin is withheld from him, this is a deforcement, and the person who withholds the seisin is called a deforceor. (3 Bl.-Com. 172;

Butler's note to Co. Litt. 331 b.) So if a man covenants to convey lands to another and refuses to do so, continuing in possession against him, this wrongful possession is a deforcement; whence in levying a fine of lands, the person against whom the fictitious action was brought upon a supposed breach of covenant, was called the deforciant. 3 Bl. Com. 174. See **FINE**; **QUOD EI DEFORCEAT**; **TENANT AT SUFFERANCE**.

DEFORCIARE.—To withhold property from the right owner.

DEFORCIATIO.—A distress; a holding of goods for the satisfaction of a debt.

DEFOSSION.—The punishment of being buried alive.

DEFRAUD.—To cheat; to wrong another by fraud. See **FRAUD**.

DEFRAUD, (defined). 4 Halst. (N. J.) 302, 313.

— (not synonymous with "hinder and delay"). 68 Mo. 435, 439.

DEFRAUDATION.—Privation by fraud.

DEFRAYING THE PUBLIC CHARGES, (in a statute). 18 Johns. (N. Y.) 242.

DEFUNCT.—One that is deceased; a dead man or woman.

DEGRADATION.—An ecclesiastical censure, whereby a clergyman is removed from the ministry, i. e. deprived of holy orders. It seems to differ from "deposition" in being more humiliating, but there is some confusion in the books on the subject. Phillim. Ecc. L. 1399; Rog. Ecc. L. 335 *et. seq.*

DEGRADATIONS.—A term for waste in the French law.

DEGREE.—(1) A step in the line of descent or relationship. (2) The status or condition of a person. (3) A mark of distinction conferred upon a student for proficiency in some art or science. (4) A particular grade of crime more or less culpable than another grade of the same offence.

DEGREE, (synonymous with "estate"). 1 Com. Dig. 95.

DEGREE, IN EQUAL, (in a will). 12 Ves. 433.

DEGREES.—In the law of real actions, degrees were certain alterations in the rights of a person who had disseised another of his land,

as where the disseisor conveyed the land to a stranger, or died seized so that the land descended to his heir. The nature of the action to be brought by the disseisee depended upon the number of degrees between the original disseisor and the person actually in possession of the land. Co. Litt. 238 b; Rosc. Real Ac. 88.

DEHORS.—Foreign to; outside; out of the point in question; foreign to the record.

DEI GRATIA.—By the grace of God. An expression used in the titles of sovereigns, denoting a claim of authority derived from divine right. It was anciently a part of the titles of inferior magistrates and other officers, civil and ecclesiastical, but was afterwards considered a prerogative of royalty.—*Abbott*.

DEI JUDICIUM.—The old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence. See ORDEAL.

DEJACION.—In the Spanish law: (1) A surrender of his property to his creditors by an insolvent debtor; (2) the renunciation of an inheritance; (3) the release of a mortgage upon payment; (4) the abandonment of insured property to the insurer.

DEJERATION.—A taking of a solemn oath.

DEL CREDERE.—A *del credere* agent, or agent acting under a *del credere* commission, is an agent for the sale of goods, who, in consideration of a higher reward than is usually given, guarantees the due payment of the price of all goods sold by him, *i. e.* engages to pay the price himself if the purchaser does not. Chit. Cont. 189; Benj. Sales 607 n. See COMMISSION, § 2.

DEL CREDERE, (defined). 3 Mas. (U. S.) 232, 241; 6 Bro. P. C. 280, 287; 1 T. R. 112, 115.

DEL CREDERE COMMISSION, (effect of). 7 Wheel. Am. C. L. 434.

DEL CREDERE FACTORS, (who are). 24 Wend. (N. Y.) 169, 174.

DELABE.—In the Scotch law, to accuse.

DELATIO.—In the civil law, an accusation or information.

DELATOR.—An accuser; an informer; a sycophant.

DELATURA.—An accusation; also the reward of an informer.

DELAY, (in contract for sending telegraphic messages). 6 Abb. (N. Y.) Pr. N. S. 405, 423; 45 N. Y. 744.

DELAY OF EXECUTION, (effect of). 6 Halst. (N. J.) 310; 7 *Id.* 293.

— (is not a fraud). 12 Wend. (N. Y.) 404, 406.

DELECTUS PERSONÆ.—The choice of a person. It is an established principle of the common law, that as a partnership can commence only by the voluntary contract of the parties, so, when it is once formed, no third person can be afterwards introduced into the firm without the concurrence of all the partners who compose the original firm. It is not sufficient to constitute the new relation that one or more of the firm shall have assented to his introduction; for the dissent of a single partner will exclude him, since it would, in effect, otherwise amount to a right of one or more of the partners to change the nature and terms and obligations of the original contract, and to take away the *delectus personæ*, which is essential to the constitution of a partnership. So stubborn, indeed, is this rule, that even the executors and other personal representatives of a partner do not, in that capacity, succeed to the state and condition of that partner. The Roman law is direct to the same purpose. It even pressed the rule to a still further extent, and held that a positive stipulation between the partners at the commencement of the partnership, that the heir or personal representative of a partner should succeed him in the partnership, was inoperative and incapable of being enforced. The common law, however, treats such a stipulation as valid and obligatory. This also, according to Pothier, was the doctrine of the old French law, and the modern code of France has expressly adopted it, in opposition to the Roman law. Such also is the law of Scotland. (Story Part. 6.)—*Wharton*.

Delegata potestas non potest delegari (2 Inst. 597): A delegated power cannot be delegated.

DELEGATE.—

§ 1. **In American law.**—One clothed with power to act for another; the representative of the people of a Territory in Congress; members of political conventions chosen by the electors to nominate candidates for public office.

§ 2. In English law.—Commissioners appointed by the crown, by a special commission of delegacy, to hear an ecclesiastical cause either in lieu of the archbishop of the province, or by way of appeal from him. The Court of Delegates was abolished by Stats. 2 and 3 Will. IV. c. 92, and 3 and 4 Will. IV. c. 41, and its jurisdiction transferred to the Judicial Committee of the Privy Council. Phillim. Ecc. L. 1268 *et seq.*

DELEGATING, (a power). 1 Hill (N. Y.) 501; 4 Johns. (N. Y.) Ch. 368; 5 Paige (N. Y.) 487. — (an authority). 4 Halst. (N. J.) 335; 2 Hill (N. Y.) 434.

DELEGATION.—A sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him.

DELEGATION, (defined). 48 Miss. 450.

DELEGATUS NON POTEST DELEGARE.—A person to whom a power, trust or authority is given to act on behalf or for the benefit of another, cannot delegate it—*i. e.* he cannot put another person in his place—unless he is authorized to do so. (See SUBSTITUTE.) The rule applies especially to persons acting under powers of attorney, to directors of companies, and to trustees, executors, &c. It must not, however, be understood of merely ministerial acts, which do not involve the exercise of discretion, and which the *delegatus* cannot reasonably be expected to perform himself. Therefore a trustee may employ a banker, steward or agent to receive or pay money or the like. Lewin Trusts 224. See AGENCY, § 1.

DELETERIOUS OR POISONOUS, (necessary in indictment for poisoning). 4 Car. & P. 571.

DELF.—A quarry or mine. 31 Eliz. c. 7.

Deliberandum est diu quod statutum est semel (12 Co. 74): That which is to be resolved once for all, should be long deliberated upon.

DELIBERATE—DELIBERATION.—To deliberate is to weigh in the mind; to reflect upon; to ponder. Also, to consult with others, as the deliberation of a jury. In criminal law, particularly with respect to homicide, deliberation is an essential element of the higher degree of crime. See AFORETHOUGHT; MALICE; PREMEDITATION.

DELIBERATELY AND PREMEDITATEDLY, (construed). 75 Pa. St. 403, 406.

DELIBERATION, (in a statute). 18 Am. Dec. 778 n., 779 n.

Delicatus debitor est odiosus in lege: A luxurious debtor is odious in law. (2 Bulst. 148.) Imprisonment for debt has now, however, been abolished, save only in certain exceptional cases.

DELICT.—A tort of a fraudulent character; a misdemeanor of a low grade, punishable by a small fine or short term of imprisonment. They are called "private" or "public" delicts according as they may affect an individual or the public generally, and *quasi* delicts when caused by carelessness unaccompanied by malice.

DELINEATED, (in a statute). L. R. 18 Eq. 740.

Delinquens per iram provocatus puniri debet mitius (3 Inst. 55): A delinquent provoked by anger ought to be punished more mildly.

DELICTUM.—A crime or offence; a tort or wrong; guilt or fault. See CHALLENGE, § 3; IN PARI DELICTO.

DELIMIT.—To mark or lay out the limits or boundary line of a territory or country.

DE-LIMITATION.—The act of fixing, marking off, or describing the limits or boundary line of a territory or country.

DELIRIUM, (defined). 17 Am. Dec. 311.

DELIRIUM TREMENS.—A disorder of the brain resulting from the excessive and protracted use of intoxicating liquors. A person who commits crime while suffering with this disease is not responsible, but the defence must be clearly proved.

DELIVER, (equivalent to "pay," in bill of exchange). 1 Bouv. Inst. 459.

DELIVER MONEY, (in a promissory note). 1 Bouv. Inst. 458.

DELIVER TO, (in a bond). 33 Conn. 489, 496.

DELIVER UP, (in insolvent act). 3 Atk. 378, 380.

DELIVER UP A BOND TO BE CANCELLED, (in a will). 1 Wils. 178.

DELIVERANCE.—See REPLEVIN.

DELIVERANCE, (in a statute). 2 Wend. (N. Y.) 345, 348.

DELIVERED, (bond must be). 2 Wheel. Am. C. L. 376.

— (in statute of usury). 49 Wis. 697.

— (what is sufficient evidence of a deed being). 2 Day (Conn.) 280.

DELIVERED, READY TO BE, (in an arbitration bond). 6 Mod. 160.

DELIVERY.—

§ 1. **Chattels.**—Delivery primarily signifies the act of transferring the possession of a movable thing from one person to another. (Perkins speaks of the delivery, *i. e.* payment of legacies; Prof. Book, § 7.) Thus, the delivery of goods is a necessary part of the transaction called a "sale" (*q. v.*) As to the distinction between delivery in the "formation," and delivery in the "performance" of a contract, *see* Benj. Sales 554.

§ 2. **Actual, or constructive.**—Delivery is either actual or constructive. Thus, if goods cannot conveniently be actually handed from one person to another, as if they are in a warehouse or a ship, the delivery of the key of the warehouse, a delivery order, bill of lading, &c., is a constructive or symbolical delivery of the goods themselves. Wms. Pers. Prop. 37; Benj. Sales 573. *See* DELIVERY ORDER; LIVERY.

§ 3. **Deeds.**—In conveyancing, delivery is that part of the operation of executing a deed by which the grantor signifies his intention when and how the deed is to take effect. Delivery is of two kinds: (1) absolute delivery, when the grantor intends the deed to take effect at once and unconditionally, even though he should retain the deed in his own possession. (Wms. Real Prop. 147 *et seq.*) This kind of delivery is generally effected by the grantor saying, at the time of signing and sealing the deed, "I deliver this as my act and deed" (*Id.*); (2) delivery as an escrow, when the deed is delivered by the grantor to a third person not a party to it, to be delivered up to the grantee upon the performance of a condition, as the payment of money or the like. *Id.*; Shep. Touch. 57. *See* ESCROW; EXECUTION. As to the history of delivery, *see* Markby's Elements of Law, § 473.

§ 4. **Pleadings.**—Pleadings are delivered by being left at the address of the opposite party or his attorney or solicitor, unless the party has failed to enter an appearance, in which case the pleading (if one is required) is delivered by being filed with the proper officer. *See* SERVICE.

§ 5. **Execution.**—As to execution by delivery, *see* EXECUTION; JUDGMENT; WRIT OF DELIVERY.

DELIVERY, (what is). 5 N. H. 570, 572; 2 Aik. (Vt.) 79; 1 East 192, 194, 515, 524; 12 *Id.* 614, 619; 1 Esp. 598; 3 *Id.* 12, 14; 1 Moo. 12, 29; 8 Wheel. Am. C. L. 163.

— (what is not). 51 Ala. 481, 484; 12 Rob. (La.) 51, 54; 8 Pick. (Mass.) 543, 545; 2 Wend. (N. Y.) 308, 317.

— (by carrier). 3 N. Y. 322.

— (in a sale, defined). 2 Cal. (N. Y.) 44.

— (in a statute). 5 Burr. 2719.

— (is necessary to the conveyance of a personal chattel). 4 Wheel. Am. C. L. 295.

— (of cotton, what is not). 1 Bail. (S. C.) 553.

— (of deed). 4 Day (Conn.) 66, 79; 22 Ind. 36, 39; 24 *Id.* 231, 240; 46 Iowa 287; 8 Mass. 230, 239; 10 *Id.* 456, 458; 17 *Id.* 212, 220; 2 Beas. (N. J.) 455; Coxe (N. J.) 66; Saxt. (N. J.) 458; 12 Johns. (N. Y.) 421, 550; 17 *Id.* 543, 577; 20 *Id.* 187; 1 Johns. (N. Y.) Cas. 114; 1 Johns. (N. Y.) Ch. 240; 15 Wend. (N. Y.) 647, 651; 1 Dev. (N. C.) Eq. 14; 5 Barn. & C. 671, 687.

— (of execution to sheriff). 1 Harr. (N. J.) 254.

— (of goods). 3 Mas. (U. S.) 107, 112; 16 Wall. (U. S.) 319; 3 Houst. (Del.) 176, 209; 5 Johns. (N. Y.) 335; 15 *Id.* 39; 10 Wend. (N. Y.) 389, 391; 14 *Id.* 546, 563; 2 Wheel. Am. C. L. 149; 2 H. Bl. 316; 3 Bos. & P. 582, 584; 1 Campb. 235 *n.*, 452, 453; 2 *Id.* 243, 245.

— (of mortgage). 8 Ind. 364, 367.

— (of possession of lands). 2 Gr. (N. J.) 456.

— (to carrier). 2 Hill (N. Y.) 137.

— (to constitute valid gift *inter vivos*). 19 Barb. (N. Y.) 631; 2 Johns. (N. Y.) 52.

— (to third person for use of donee). 1 Paige (N. Y.) 316.

— (under statute of frauds). 3 Johns. (N. Y.) 399, 420; 18 *Id.* 58.

DELIVERY, CONSTRUCTIVE, (what is). 12 Mass. 300, 302; 17 *Id.* 197, 204; 1 Gow 58, 64; 1 Taunt. 458, 460.

DELIVERY ORDER.—An order addressed, in England, by the owner of goods to a person holding them on his behalf, requesting him to deliver them to a person named in the order. Delivery orders are chiefly used in the case of goods held by dock companies, wharfingers, &c. Such an order is not a document of title, and therefore does not transfer the property or divest the vendor's lien for the purchase-money, until it is acted on by the holder obtaining either (1) actual delivery, or (2) an entry of his title in the wharfinger's books, or (3) the issue of a dock warrant in his name, which last operation would apparently presuppose the second. Until he does one of these things, the original owner may obtain delivery to himself or transfer the property in the goods to some one else. *McKewan v. Smith*, 2 H. L. Cas. 309; *Imperial Bank v. L. & St. K. Dock Co.*, 5 Ch. D. 195; Cav. Sec. 338; Benj. Sales 684. *See* DOCK WARRANT.

DELUSIONS.—Belief in the existence of things which do not exist, or do not exist in the manner or to the extent in

which they are believed to exist. The general rule is that where a person suffers from mental delusions, his capacity to enter into contracts and make testamentary and other dispositions of his property is not affected by the delusions unless they are calculated to influence the particular contract or disposition, even though they are connected with its subject-matter. Thus, where a person at the time he granted a lease labored under the delusion that the property was impregnated with sulphur, it was properly left for the jury to say whether as a matter of fact that delusion made him incompetent to grant the lease. *Jenkins v. Morris*, 14 Ch. D. 674. See *Banks v. Goodfellow*, L. R. 5 Q. B. 549; *Smee v. Smee*, 5 P. D. 84. See, also, LUNATIC.

DELUSIONS, (as constituting insanity). 16 Barb. (N. Y.) 259, 262; 2 Park. (N. Y.) Cr. 215.

DEMAIN.—See DEMESNE.

DEMAND.—Demand, “in the understanding of the common law, is of so large an extent as no other one word in the law is” (Co. Litt. 291 b), and therefore if a person release to another all manner of demands, this is the best release that the latter can have, for by it all actions, executions, rights of entry, rents, commons, profits *à prendre*, obligations, contracts, &c., are released and discharged. *Ib.*; Litt. § 508 *et seq.* See DEMANDANT.

§ 2. A demand also signifies a request addressed to a person that he will do some act which he is legally bound to do, after the request has been made. Thus, bills of exchange and promissory notes may be, and checks must be, made payable on demand. When a bill or note is made payable on demand, the Statute of Limitations does not, in general, begin to run until the demand is made, unless it appears that the debt was recoverable on demand, and not merely payable on demand. Shelf. R. P. Stat. 269. The reservation of interest from the date of the bill or note raises a presumption that the cause of action accrued from that date, and not from the time of demand. *Id.*, and see *infra*, § 3.

§ 3. Stale demand.—It is a doctrine of equity that where a claim is put for-

ward which arose many years ago, and it is clear from the circumstances of the case, that the person putting it forward has long been cognizant of his rights, and has neglected to enforce them, the court will decline to recognize his claim, although it may not be barred by the Statute of Limitations. Such a claim is called a “stale demand.” The term is chiefly used with reference to trusts, to which the Statutes of Limitation do not apply (*McDonnell v. White*, 11 H. L. Cas. 570), but it is also sometimes applied to ordinary debts. Thus, where A. gave B. a promissory note, payable three months after demand, no interest being reserved, and A. paid two half-yearly instalments of interest within eighteen months from the date, but no further interest was paid, and no proceedings were taken to enforce payment of the note for nearly forty years, the court expressed an opinion that even if the claim had not been barred by the statute, it ought to be rejected as a “stale demand.” *In re Rutherford*, 14 Ch. D. 687.

DEMAND, (defined). 1 Halst. (N. J.) 417; 8 Allen (Mass.) 314, 315.

—(distinguished from “debt”). 2 Hill (N. Y.) 220.

—(in a written instrument). 11 Ind. 236.

—(in an acquittance). 1 Den. (N. Y.) 257.

—(in attachment act). 32 How. (N. Y.) Pr. 282.

—(means “rightful demand”). 2 Tyrw. 503, 510.

—(of a check). 6 Cow. (N. Y.) 484.

—(promissory note payable on). 2 Mas. (U. S.) 241; 2 Cai. (N. Y.) 369; 1 Cow. (N. Y.) 397; 10 Wend. (N. Y.) 304, 308; 13 *Id.* 267, 268; 9 Barn. & C. 409, 410.

DEMAND, ACCOUNT ON, (in a guaranty). 15 Wend. (N. Y.) 329, 332

DEMAND IN RECONVENTION.

—A civil law term in use in Louisiana, to designate a demand which a defendant sets up in consequence of that which the plaintiff has brought against him.

DEMAND PAYMENT, (of a bill of exchange). 4 How. (U. S.) 262, 271.

DEMAND, SUE FOR, RECOVER, RECEIVE, (in a power of attorney). 10 Pet. (U. S.) 177, 182; 5 Barn. & Ald. 204; 1 Taunt. 347.

DEMAND, TWO YEARS AFTER, (in a promissory note). 8 Dowl. & Ry. 347.

DEMANDANT.—The technical name for the actor in a real action, correspond-

ing to "plaintiff" in a personal or mixed action. Co. Litt. 127 b. See ACTOR.

DEMANDED, (in a bond). Cro. Jac. 242.

DEMANDED, LAWFULLY, (defined). 2 Mau. & Sel. 525, 529.

DEMANDRESS.—A female demandant.

DEMANDS, (defined). 6 Mod. 231, 232.

——— (what includes). 14 Wend. (N. Y.) 58, 59.

——— (in a deed). 4 Wheel. Am. C. L. 250.

——— (in a statute). 33 Ind. 386.

——— (in a submission to arbitration). 5 Mass. 336.

——— (release of all). 1 Root (Conn.) 319, 320; 9 Mass. 235, 238; 3 Johns. (N. Y.) 68; Co. Litt. 291 b; 1 Mod. 99; 2 Id. 281; 3 Id. 277, 279; 12 Id. 455, 460; 2 Ld. Raym. 1306; Yelv. 156, 214.

DEMANDS, ALL, (in a receipt). 1 Root (Conn.) 235.

——— (in a rule of reference). 9 Mass. 320.

——— (in a statute). 18 Wend. (N. Y.) 126, 133.

——— (in a submission to arbitration). 2 N. H. 26, 429; 12 Johns. (N. Y.) 311; 15 Id. 197.

DEMANDS AND ACTIONS, (release of all). Cro. Jac. 222, 487, 623.

DEMANDS, DEBTS AND DUES, (in a deed). 12 Serg. & R. (Pa.) 269, 271.

DEMANDS IN FULL, (in a deed of assignment). 9 Serg. & R. (Pa.) 123, 124.

DEMANDS, IN FULL OF ALL, (in a release). 2 Conn. 120, 124.

DEMANDS, IN FULL SATISFACTION OF ALL, (in a statute). 17 Wend. (N. Y.) 285, 290.

DEMEASE.—Death.

DEMEMBRATION.—In the Scotch law, the offence of maliciously cutting off a limb.—*Bell Dict.*

DEMENS.—One whose mental faculties are enfeebled; one who has lost his mind; distinguishable from *amens*, one totally insane. 4 Co. 128.

DEMENTED.—Of unsound mind.

DEMENTIA.—Mental weakness; unsoundness of mind; loss of intellect; idiocy; insanity. *Senile dementia* of a testator is often a sufficient ground for setting aside his will.

DEMENTIA, (defined). 2 Abb. (U. S.) 507, 511.

——— (synonymous with "weakness of mind"). 44 N. H. 531, 537.

DEMESNE.—NORMAN-FRENCH: *demeyne*, from Latin, *dominium*, ownership.

§ 1. In its primary sense, *demesne* signifies "own," or that which is a man's private property. Thus, Britton (90b) speaks

of the right of some lords to hang their tenants on their *fourches demeyne*, or private gallows, in *proprio patibulo*. Fleta 62.

§ 2. Land.—Hence *demesne*, as applied by the old writers to lands or rents, signified that they were in the possession or occupation of a freehold tenant, or of his lessees for years, as opposed to those which others held of him for an estate of freehold. Thus, if A. was seised for an estate of freehold of eleven acres of land, and granted six of them to B., to be held by him as A.'s tenant, then A. was said to be seised of the remaining five *in dominico*, and of the six which he had granted to B. he was seised *in servitio*.

§ 3. Under the old law, when an heir brought an action to recover land belonging to his ancestor, he had to allege in the writ that his ancestor died seised of the land "in his demesne as of fee," meaning that the immediate freehold in severalty was vested in him for an estate of fee-simple, as opposed to one who held land for a term of years, or for life only, or in common with others, or *in servitio*. (The authorities are very conflicting as to the proper meaning of *dominium*, but the explanation given above seems the most probable. See Britt. 205 b; Bract. 263 a; Fleta 289; Co. Litt. 17 a; Co. Copyh. § 12; Wms. Seis. 6; 2 Bl. Com. 105; 1 Steph. Com. 233. Of course, after the abolition of subinfeudation (*q. v.*) no one can create an estate to be held by the grantee as his tenant, unless it is less than an estate in fee-simple.) From this use of the phrase, *in dominico suo ut de feodo* came to be the technical description of an estate of fee-simple in a real action. Litt. § 10.

§ 4. Manor.—*Demesne* was also applied to those parts of a manor, in England, which were in the occupation of the lord, or of his villeins, or tenants for years, being cultivated "for the necessary sustentation, maintenance and supportation of the lord and his household" (Co. Litt. 17 a; Britt. 205; Att.-Gen. v. Parsons, 2 Cromp. & J. 279. That part of the demesne lands which was in the possession of the villeins was called *dominium villenagium*; Bract. 263 a; Fleta 289), as opposed to that part of the manor which had been granted out to free tenants in consideration of services; hence, a manor is said to be held *in dominico*, and *in servitio*, or to consist of demesnes and services. (Co. Litt. 17 a; Co. Copyh. § 2.) At the present day the demesne lands of a manor consist (1) of the lord's demesnes, or that part which is in the actual

occupation of the lord, (2) of the copyholders' demesnes, or the part held by copyhold tenants, and (3) of the waste land of the manor. Co. Copyh. § 12 *et seq.* See MANOR; SERVICE.

§ 5. **Crown lands.**—The *demesne* lands of the crown are those which belong to the sovereign in her public capacity, *i. e.* by succession from her predecessors, or by escheat, &c., as opposed to her private estates, namely, such as have been acquired by her by moneys out of her privy purse, or by gift or inheritance from any person other than her predecessors. The *demesnes* are under the management of the commissioners of woods, forests and land revenue, and their revenue forms part of the consolidated fund (*q. v.*) H. Cox. Inst. 698; 2 Steph. Com. 534; Stat. 14 and 15 Vict. c. 42. See ANCIENT DEMESNE; MANOR; SEIGNORY.

DEMENSE, (in letters-patent). 2 Tyrw. 223, 251.

DEMENSE AS OF FEE.—See DEMESNE, § 3.

DEMENSE IN HIS, AS OF FEE, (in pleading). Co. Litt. 17 a, b; 16 East 343.

DEMENSE LANDS OF THE CROWN.—See DEMESNE, § 5.

DEMESNIAL.—Pertaining to a *demesne*.

DEMI-MARK.—A small sum of money paid into court in certain cases, by the tenant, in the trial of a writ of right by the grand assize, to obtain an inquiry by the grand assize, into the time of the demandant's seisin.

DEMI-MARK, (tender of). 7 Cow. (N. Y.) 52; 13 Wend. (N. Y.) 546, 547.

DEMI-OFFICIAL.—Partly official or authorized.

DEMI-SANGUE, or DEMY-SANGUE.—Half-blood. See BLOOD, § 2.

DEMI-VILL.—A town consisting of five freemen, or frank-pledges.—*Spel. Gloss.*

DEMIDIETAS.—A half or moiety.

DEMINUTIO.—A loss, or deprivation; a taking away. See CAPITIS DEMINUTIO.

DEMISE.—OLD-FRENCH: *demise* or *desmise*, from *desmettre*: LATIN: *dimittere*, to send away. Skeat Etym. Dict. s. v.

Demise seems originally to have meant any transfer or succession of a right. Thus, in the old books, copyholds are said to be demisable by copy of court roll, meaning that the lord can grant them according to the custom of the manor. (Co. Litt. 58 b.) So, demise, as applied to the crown, signifies that change in the succession which takes place when the royal dignity is transferred or demised from one king to his

successor. This ordinarily occurs on the death of the king, but the expression is also used in the event of the king being deposed. 1 Bl. Com. 249.

§ 2. **Lease.**—In its ordinary sense, however, to demise is to grant a lease of lands or other hereditaments. (1 Davids. Conv. 108.) It is also applied, though rarely, to chattels, *e. g.* a ship. (Steel v. Lester, 3 C. P. D. 121.) The word "demise" in a lease of land under seal implies a covenant for title; in a parol lease it implies a covenant for quiet enjoyment. 1 Davids. Conv. 108.

DEMISE, (defined). 5 How. (N. Y.) Pr. 58, 71; Hob. 12

—— (explained). 8 Ala. 320, 322.

—— (imports a covenant). 9 Cush. (Mass.) 242, 246; 14 Wend. (N. Y.) 38, 40; Fawc. L. & T. 229; 5 Barn. & C. 589, 609; 3 Com. Dig. 253; 1 Mod. 113.

—— (in a lease). 71 Me. 64; 26 Mo. 112, 115; 9 N. H. 219; 1 Chit. Gen. Pr. 344; 1 Cro. 214, 331, 674; 4 Taunt. 329.

—— (in a will). 2 Barn. & Ad. 554, 563.

—— (in an agreement). 10 Johns. (N. Y.) 337.

DEMISE, AFTER THE, (in a deed). 3 Port. (Ala.) 69, 91.

DEMISE AND GRANT, (import a covenant). 5 Serg. & R. (Pa.) 421, 424; Amb. 247, 250; Cro. Jac. 73; 3 Wils. 25, 28.

—— (imply warranty of title). 2 Otto (U. S.) 107.

—— (in a conveyance). 1 Chit. Gen. Pr. 327.

—— (in a lease). 8 Cow. (N. Y.) 36, 39; Dyer 257 a; 9 Ves. 324, 330; Yelv. 139.

—— (in an agreement). 4 Wend. (N. Y., 502, 504.

DEMISE and RE-DEMISE.—Mutual leases of the same land, or something out of it. It is properly used upon the grant of a rent-charge, &c.

DEMISE, GRANT AND LEASE, (in a lease). 1 Cinc. (O.) 88.

DEMISED PREMISES, (in a covenant). 1 Burr. 287, 290.

DEMOBILIZATION.—In military law, the dismissal of an army or body of troops from active service.

DEMOCRACY.—A form of government in which the sovereign power is neither lodged in one man, as in a monarchy, nor in the nobles, as in an aristocracy or oligarchy, but in the collective body of the people.

DEMOCRAT.—A member of the elder and more conservative of the two great political parties in the United States.

DEMOCRATIC.—Of or pertaining to democracy, or to the party of the democrats.

DEMONETIZATION.—The withdrawal of the value of a thing as money.

DEMONSTRATIO.—Demonstration; description; denomination; addition. *See* **FALSA DEMONSTRATIO**, &c.

DEMONSTRATIVE LEGACY.—*See* **LEGACY**, § 3.

DEMONSTRATIVE LEGACY, (defined). 63 Pa. St. 312, 316.

DEMPSTER.—The chief judge of a Tinswald Court in the Isle of Man. *See* **DEEMSTER**.

DEMUR.—

§ 1. In pleading, to demur is to raise an objection by demurrer (*q. v.*)

§ 2. **Parol.**—Formerly, at common law, in all actions for debt against infant heirs by specialty creditors of their ancestors, either party was entitled to pray that the parol might demur, *i. e.* that the proceedings might be stayed until the heir had attained his full age. This rule was the foundation of a similar practice in equity, where it was by analogy extended to all cases in which the real estate of an infant was to be sold or conveyed under the decree of the court; *e. g.* foreclosure and partition suits. (*See* **DAY TO SHOW CAUSE**.) The demurrer of the parol was abolished by Stat. 11 Geo. IV. and 1 Will. IV., c. 47, § 10. Archb. Pr. 1013; Dan. Ch. Pr. 149.

DEMURRABLE.—A pleading, petition, or the like, is said to be demurrable when it does not state such facts as support the claim, prayer, or defence put forward. *Ex parte* Coates, 5 Ch. D. 979.

DEMURRAGE.—**SPANISH:** *demoraje*, from Latin, *demorari*, to delay.

In the law of merchant shipping, demurrage means (1) the detention of a ship by the freighter beyond the number of days allowed for loading or unloading, and (2) the sum which is fixed by the contract of affreightment (*e. g.* the charter-party) as a remuneration to the ship-owner for the detention of the ship; the number of days during which the ship may be detained on demurrage at the rate agreed upon (called "days of demurrage") is generally fixed by the contract. When the ship is detained by the freighter beyond the days of demurrage, a claim of the same nature arises for damages for the subse-

quent detention. Maud & P. Mer. Sh. 306 *See* **CHARTER-PARTY**.

DEMURRAGE, (defined). 1 Holmes (U. S.) 290, 292; 3 Chit. Com. L. 426.
— (contract concerning). 26 N. Y. 85.

DEMURRER.—From **LATIN:** *demorari*, to abide; either because the party demurring relied on the point of law (*nous demurroins en vos discretions si nous etions mest a respond*. Year Book, 1 Edw. II. 8, cited Steph. Pl. (5); App. n. (14)), or because he put a stop to the pleadings in order to have the question of law determined. *See* Co. Litt. 71b. *See, also*, **DEMUR.**

§ 1. A demurrer is a pleading by which one of the parties in effect alleges that the facts stated by the opposite party in the preceding pleading (or in a particular part of it), even assuming them to be true, do not sustain the contention based on them; *i. e.* do not show a good cause of action or ground of defence, set-off, counter-claim, reply, &c. Thus, in an action on a bill of exchange, by an indorsee against the acceptor, if the defendant, in his answer, alleges that there was no consideration for the acceptance, the plaintiff may demur to this defence, because a *bonâ fide* holder for value of a bill of exchange can recover against the acceptor notwithstanding a defect in the title of the original holder. (*See* **NEGOTIABLE**.) Such simple cases as this are not likely to occur in practice, and usually demurrers raise new points.

§ 2. **Demurring ore tenus.**—When a demurrer comes on for hearing and the party demurring takes an objection which might have been but was not raised by the demurrer, this is called "demurring ore tenus." Dan. Ch. Pr. 504; Dawkins v. Lord Penrhyn, 6 Ch. D. 318.

§ 3. If, on the argument of a demurrer, judgment is given in favor of the demurring party, the demurrer is said to be allowed or sustained; if it is given against him, it is said to be overruled.

§ 4. A demurrer affords a rapid and inexpensive mode of determining a point of law in question between the parties, and, if the whole case lies in that question, the determination of the demurrer determines the result of the action. If, however, there are several questions of fact or law in the case, or if the demurrer is occasioned by bad pleading, the action goes on notwithstanding the determination of the demurrer, because in the former case the remaining questions have to be decided,

and in the latter case the court generally gives the party against whom a demurrer has been allowed, leave to amend his pleading, so as to state facts showing a cause of action or ground of defence. Questions of law may also be raised by special cases, motions for judgment and new trial, &c.

The nature of demurrers differs according as they were used at common law or in equity.

§ 5. At common law there were formerly, in England, two kinds of demurrers, viz.: "demurrers upon pleading" and "demurrers upon evidence." (Co. Litt. 72a.) Demurrers upon pleading were similar to demurrers under the present practice, except that a joinder in demurrer was necessary by the party whose pleading was impeached, and that the pleadings down to the joinder had to be made up into a demurrer book. (Chit. Pr. 928. See ISSUE.) Before the Common Law Procedure Act, 1852, demurrers upon pleading were of two kinds: "general demurrers," or "demurrers to the substance," raising a point of law, and "special demurrers," or "demurrers to the form," used where the pleading demurred to did not follow the rules of pleading. The latter were called "special" because the defect of form objected to had to be specified in the demurrer. (Co. Litt. 72a; 3 Bl. Com. 315; Steph. Pl. (5) 151.) Special demurrers were abolished by the C. L. P. Act, 1852, § 51. There were also demurrers to aid prier, voucher, receipt, waging of law and the like (Co. Litt. 72a), but these were antiquated long before the passing of the Judicature Acts.

§ 6. A demurrer to evidence is raised upon the trial of an action; the party demurring declares that he will not proceed because the evidence offered on the other side is not sufficient to maintain the issue. The practice of moving for a new trial has, in most jurisdictions, superseded this proceeding. 5 Co. 104; Co. Litt. 72a; Steph. Pl. (5) 99, 101; 3 Bl. Com. 372; Chit. Pr. 439.

§ 7. In equity, demurrers are rarely pleaded except by defendants, and are of several kinds, of which demurrers for want of equity, for want of parties, and for multifariousness, are the most important. (Hunt. Eq. 29; Mitf. Pl. 107 *et seq.*; Dan. Ch. Pr. 470 *et seq.*) If a demurrer is so framed as to bring in facts not stated in the bill, it is called a "speaking demurrer," and should be overruled. Hunt. Eq. 36; Dan. Ch. Pr. 504.

§ 8. Demurring is also applicable to various proceedings not being actions; *e. g.* to some old common law writs (for an instance of a demurrer to a return to a man-

damus and of a demurrer to a plea to the return, see *The Queen v. The Postmaster-General*, 1 Q. B. D. 658), and to an indictment or information. Broom Com. L. 993, *n.* (p).

§ 9. Criminal procedure.—Demurrers in criminal prosecutions by indictment or information often occur in practice. A general demurrer is founded on some substantial defect in the indictment; a special demurrer, or demurrer in abatement, is founded on some formal defect; special demurrers are nearly obsolete. Archb. Crim. Pl. 131. See ARREST OF JUDGMENT.

DEMURRER, (defined). 23 Conn. 69, 89.

—— (what constitutes). 6 Cow. (N. Y.) 555.

—— (effect of). 5 Halst. (N. J.) 328.

—— (in equity, effect of). Sax. (N. J.) 43.

DEMURRER BOOK.—A record of the issue on a demurrer at law, containing a transcript of the pleadings, &c., intended for the use of the court and counsel on the argument of the demurrer. 3 Bl. Com. 317.

DEMURRER TO EVIDENCE.—See DEMURRER, § 6.

DEN.—A valley.—*Blount*. A hollow place among woods.—*Cowell*.

DEN AND STROND.—A liberty for ships or vessels to run or come ashore.—*Cowell*.

DENA TERRÆ.—A hollow place between two hills; a little portion of woody ground; a coppice.—*Cowell*.

DENARIATE.—As much land as was worth one penny per annum.

DENARII.—A sort of ready money; pennies; pence.

DENARII DE CARITATE.—Customary oblations made to a cathedral church at Pentecost.

DENARII S. PETRI (commonly called "Peter's pence").—An annual payment on St. Peter's feast of a penny from every family to the Pope, during the time that the Roman Catholic religion was established in England.

DENARIUS.—The chief silver coin among the Romans, worth 8*d.*; it was the seventh part of a Roman ounce. Also, an English penny. The denarius was first coined five years before the first Punic war, B. C. 269. In later times a copper coin was called denarius.—*Smith. Dict. Antig*

DENARIUS DEI.—God's penny, or earnest given and received by parties to contract, &c., paid in former times to the church or poor.

DENARIUS TERTIUS COMITATUS.—A third part or penny of the county paid to its earl, the other two parts being reserved to the crown.

DENBARA, or DENBER.—A pen for hogs; a swine-court.—*Cowell.*

DENELAGE.—The laws which the Danes enacted whilst they had the dominion in England. See **DANELAGE.**

DENIAL.—A traverse in the pleading of one party of the statement set up by the other; a defence.

DENIZATION—DENIZEN.—**NORMAN-FRENCH:** *denzein*, from *deins*, within; the *i* seems to have been inserted by analogy to citizen. *Muller Etym. Wb. s. v.; Co. Litt. 129a.*

§ 1. A denizen, in the primary but obsolete sense of the word, is a natural-born subject of a country (*Co. Litt. 129a*. "If the king and his subjects should conquer another kingdom or dominion [they] are all denizens of the kingdom or dominion conquered." *Calvin's Case*, 7 Co. 6), or a native or inhabitant of a city or liberty. ("Cest asavoir, qe lasise de pain soit garde sur le assai, ausi bien de *denzeins* come de *foreins*." *Liber Custumarum* 303.) Denization therefore originally signified making an alien into a denizen or natural-born subject ("The king cannot grant to any other to make of strangers born denizens . . . for the law esteemeth it a point of high prerogative . . . to make aliens born subjects of the realm, and capable of the lands and inheritances of England in such sort as any natural-born subject is." 7 Co. 25b); and thus denizen afterwards acquired the special sense of an alien who had been "indenized," or made a natural-born subject.

§ 2. Denizen, in its modern [English] sense denotes a person who is an alien born, but who has obtained from the crown letters-patent, called "letters of denization," to make him an English subject (*Co. Litt. 129a*, where particular or limited denizations, "as when one is made denizen for life, or in taile," are mentioned. See **ALLEGIANCE**); formerly there were several differences between denizens and naturalized subjects, principally with reference to

the inheritance of land (*Ibid.*); but since the passing of the Naturalization Act, 1870, these differences have become unimportant, and now that naturalization can be easily obtained (*Stat. 7 and 8 Vict. c. 66*; *Naturalization Act, 1870*), letters of denization are seldom granted. *Rep. of Comm. on Natur. App. 8. See NATURALIZATION.*

DENIZATION, (acts prospectively). 1 McCord (S. C.) 352, 371.

DENIZE.—To make a man a denizen or citizen.

DENIZEN, (defined). 6 Pet. (U.S.) 102, 116 n.; 20 Wend. (N. Y.) 338, 354; 1 Bl. Com. 374; *Co. Litt. 129a*.

Denominatio fieri debet a dignioribus: Denomination should be deduced from the more worthy.

DENOUNCEMENT, (defined). 1 Cal. 55, 63.

DENSHIRING OF LAND.—A method of improving land by casting parings of earth, turf, and stubble into heaps, which when dried are burned into ashes for a compost.—*Cowell.*

DENUMERATION.—The act of present payment.

DENUNCIATION.—An accusation (*q. v.*)

DENUNTIATIO.—In old English law, a summons or public notice.

DENY, (defined). 3 Bos. & P. 434, 438.

DEODAND.—Formerly if a personal chattel was the immediate and accidental cause of the death of any reasonable creature (as where a man was run over by a cart or killed by an ox), it was forfeited to the crown under the name of a deodand (*Deo*, to God, *dandum*, to be given). This rule was abolished by *Stat. 9 and 10 Vict. c. 62*. 1 Bl. Com. 300; 2 Steph. Com. 551.

DEOR HEDGE.—The hedge enclosing a deer park.

DEPART FROM THE STATE, (in a statute). 4 Neb. 25, 29.

DEPART UNTIL DISCHARGED, NOT TO, (in recognizance). 10 Wend. (N. Y.) 431, 435.

DEPART, WARRANTED TO, (in a policy of insurance). 3 Mau. & Sel. 461.

DEPARTMENT.—

§ 1. A portion of a State or country. In France the term is applied to divisions of the country similar to counties, and the

United States have been divided into departments for military purposes.

§ 2. In the United States there are executive departments, to each of which a certain portion of the executive business of the government is assigned. *See* CABINET.

DEPARTMENTS, MILITARY, (what are). 1 Pet. (U. S.) 293, 297.

DEPARTURE.—

§ 1. In maritime law.—A deviation from the course prescribed in a policy of insurance.—*Bouvier*.

§ 2. In pleading, departure "is said to be when the second plea containeth matter not pursuant to [the party's] former [plea], and which fortifieth not the same, and thereupon it is called '*decessus*,' because he departeth from his former plea." (Co. Litt. 304a.) Thus, if a plaintiff, suing as the executor of A. B., alleges in his declaration that the cause of action accrued to A. B. in his lifetime, and in his replication alleges that it accrued to him as executor after A. B.'s death, this is a departure. (Steph. Pl. (5), citing *Hickman v. Walker*, Willes 27.) Departure was forbidden by the rules of common law pleading, and is so still by the modern practice.

DEPARTURE, (in pleading, defined). 5 Conn. 373, 379; 25 Ind. 22, 29; 49 *Id.* 111, 113; 119 Mass. 179, 185; 16 Johns. (N. Y.) 205; 13 N. Y. 83, 89; 2 Wend. 580; 7 Wheel. Am. C. L. 350.

DEPARTURE FROM PORT, (what is not). 7 Cranch (U. S.) 100.

DEPARTURE IN DESPITE OF COURT.—This expression was used in the old English practice to denote the failure of the tenant in a real action to appear upon demand, after having once appeared and been present in court.

DEPARTURE OF A SHIP, (what is). 6 Taunt. 241, 245.

DEPASTURE.—To feed cattle on the grass, &c., growing on land. *See* COMMON, § 4 *et seq.*

DEPECULATION.—A robbing of the prince or commonwealth; an embezzling of the public treasure.

DEPENDENCY.—A territory belonging to a separate and distinct country by title other than that of mere conquest, and not settled by citizens of that country.

DEPENDENCY, (define!). 3 Pick. (Mass.) 300, 301.

— (meaning of, in United States statute). 3 Wash. (U. S.) 281, 286.

DEPENDENT.—A contract or covenant is dependent when it is not to be performed by the contractor or covenantor until the performance by the other party of some connected contract or covenant.

DEPENDING, (in an agreement). 3 Rawle (Pa.) 283, 298.

DEPENDING SUIT, (in a statute). 4 Watts (Pa.) 154, 156.

DEPONENT.—A person who makes an affidavit, as opposed to a declarant, who makes a declaration, and a witness, who makes an oral statement. *See* AFFIANT; DEPOSITION.

DEPONENT, (defined). 47 Me. 243, 252.

DEPONENT BELIEVES, (in an affidavit). 1 Wils. 231.

DEPONENT VERILY BELIEVES, (in an affidavit). 2 Str. 1226.

DEPOPULATIO AGRORUM.—Destroying and ravaging a country. 3 Inst. 204.

DEPORTATION.—*See* ABJURATION.

DEPOSE.—(1) To lay down; to lodge; to degrade from a throne or high station. (2) To affirm in a deposition.

DEPOSIT.—

§ 1. Money lodged with a person as an earnest or security for the performance of some contract. Also, a naked bailment (*q. v.*) of goods to be kept for the bailor without recompense, and to be returned when the bailor shall require it. The appellation and the definition are both derived from the civil law, *depositum est, quod custodiendum alicui datum est*. It is, in the civil law, divisible into two kinds: (1) *necessary*, made upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called *miserabile depositum*; (2) *voluntary*, which arises from the mere consent and agreement of the parties. The common law has made no such division.

There is another class of deposits, called "involuntary," which may be without the assent or even knowledge of the depositor; as lumber, &c., left upon another's land by the subsidence of a flood or unusual tide, and goods lodged in a similar manner by a whirlwind. The civilians again divide deposits into "simple deposits," made by one or more persons having a common interest, and "sequestrations," made by one or more persons, each of whom has a different and adverse interest in controversy touching it; and these last are of two sorts, *conventional*, or such as are made by the mere agreement of the parties, without any judicial act; and *judicial*, or such as are made by order of a court in the course of some proceeding. There is another class of deposits called "irregular," as when a person, having a sum of money which he does not think safe in his own hands, confides it to another, who is to return to him, not the same money, but a like sum when he shall demand it. There is also a *quasi* deposit, as where a person comes lawfully to the possession of another person's property by finding it; and a *special* deposit of money or bills in a bank, where the specific money, the very silver or gold coin, or bills deposited, are to be restored, and not an equivalent. Story Bailm., title "On Deposits," ch. 2.

§ 2. An equitable deposit is a deposit of title-deeds or other documents of title, so as to create an equitable charge. This is frequently done in England. See CHARGE; MORTGAGE.

§ 3. A deposit in court is where property is deposited with an officer of the court for safe keeping, pending litigation, *e. g.* until a question as to the person entitled to its possession is determined; or where money is paid into court as security. See PAYMENT INTO COURT.

§ 4. On a sale of real estate, and on a sale, by auction, of personal property, it is usual for the purchaser to pay the vendor or auctioneer a deposit, *i. e.* part of the purchase-money by anticipation, as security for the completion of the purchase. Dart Vend. 191; 1 Dav. Prec. Conv. 520.

DEPOSIT, (defined). 8 Ga. 178, 180; 4 Ind. 315; 2 La. Ann. 25, 27; 15 N. Y. 9, 166, 168.

DEPOSIT, (distinguished from "loan"). 29 N. Y. 146.

DEPOSIT ACCOUNT.—A sum lodged with a bank not to be withdrawn, save altogether, and on a fixed notice.

DEPOSIT, GENERAL AND SPECIAL, (defined). 1 Metc. (Ky.) 415, 417.

DEPOSIT, ORDINARY BANK, (defined). 7 Conn. 487, 495.

DEPOSIT, SPECIAL, (defined). 7 Conn. 487, 495; 2 Wheel. Am. C. L. 121.

DEPOSITARY.—One with whom anything is lodged in trust, as "depository" is the place where it is put. The obligation on the part of the depositary is, that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust.

DEPOSITARY, (cannot dispute depositor's title). South. (N. J.) 742.

DEPOSITED FOR SAFE KEEPING, (in a statute). 17 Mass. 479, 506.

DEPOSITED IN COURT, (when money is considered). 2 Gall. (U. S.) 146, 150.

DEPOSITION.—

§ 1. In ecclesiastical law, deposition is an ecclesiastical censure by which a clergyman is removed from the ministry, *i. e.* deprived of holy orders, as opposed to deprivation of benefice (*q. v.*) Phillim. Ecc. L. 1399. See DEGRADATION.

§ 2. In procedure, depositions, in the most general sense of the word, are the written statements, under oath, of a witness in a judicial proceeding. It is in this sense that the term is used when we say that where a witness is dead, his depositions at a former trial are admissible in evidence on a subsequent trial between the same parties. (Powell Ev. 183.) In criminal procedure in England and in some of the United States, the depositions of witnesses taken before a magistrate or justice of the peace, against a person charged with an indictable offence, are subject to the same rule. (Best Ev. 140; Rosc. Cr. Ev. 71; Stat. 11 and 12 Vict. c. 42.) In a recent case in Texas the rule is stated to be that when a deposition is taken before an examining court or a jury of inquest, and is reduced to writing and certified according to law, the defendant being present, and the privilege of cross-examination afforded him, and it is

shown that since the deposition was taken the witness has died or removed beyond the limits of the State, or has been prevented from attending court by reason of age or bodily infirmity, or through the act or agency of the defendant, or by the act or agency of any person whose purpose it was to deprive the defendant of the benefit of the testimony, the deposition is admissible. *Post v. State*, 10 Tex. App. 579.

§ 3. Deposition is used in a special sense to denote a statement made orally by a person on oath before an examiner, commissioner, or officer of the court (but not in open court), and taken down in writing by the examiner or under his direction. The deposition is filed, and is used as evidence in such manner as the court directs. In the Courts of Chancery the depositions of the witnesses are taken before a master and are laid before the court at the hearing. This is the usual method of taking evidence in those courts, but in some jurisdictions provision is made for having oral testimony heard by the court. *See COMMISSION, § 7; EVIDENCE; EXAMINER.*

In the United States provision is made by congress and by the laws of most of the States for taking the depositions of witnesses in civil causes, where the attendance of the witnesses cannot be secured at the trial, on account of non-residence, sickness, etc.

DEPOSITION, (distinguished from "affidavit"). 3 Blatchf. (U. S.) 456.

— (in bastardy cases). L. R. 1 C. C. R. 320.

— (in Crimes Act). 3 Zab. (N. J.) 49.

DEPOSITO.—A Spanish law term corresponding with the English "deposit" (*q. v.*)

DEPOSITOR.—One who makes a deposit.

DEPOSITORS, (in a bank, are only general creditors). 1 Paige (N. Y.) 249.

DEPOSITORY.—The place where a deposit (*q. v.*) is placed and kept.

DEPOSITUM.—One of the four real contracts specified by Justinian, and having the following characteristics: (1) The depositary or depositor is not liable for negligence, however extreme, but only for fraud (*dolus*); (2) the property remains in the depositor, the depositary having only the possession. *Precarium* and *séquestre* were two varieties of the *depositum*,

presenting, however, material distinctions. The *depositum* is the English deposit.

DEPOT.—In the French law, is the *depositum* of the Roman and the deposit of the English law. It is of two kinds, being either (1) *dépôt* simply so called, and which may be either voluntary or necessary, and (2) *séquestre*, which is a deposit made either under an agreement of the parties, and to abide the event of pending litigation regarding it, or by virtue of the direction of the court or a judge, pending litigation regarding it.—*Brown*.

DEPOT, (defined). 24 Ohio St. 219, 229.

DEPOT OR STATION, (in a statute): 37 Conn. 153, 163.

DEPOTS, POSTS AND STATIONS, (in a contract relating to the transportation of military supplies). 19 Wall. (U. S.) 264, 268.

DEPRAVE.—To despise or exhibit contempt for. In England, depraving the Lord's Supper or the Book of Common Prayer is a criminal offence, punishable with fine and imprisonment. Steph. Cr. Dig. 99.

DEPREDAATION.—A term used in the French law to denote the pillage made of the goods of a deceased person.

DEPRIVATION.—An ecclesiastical censure, whereby a clergyman is deprived of his parsonage, vicarage, or other spiritual promotion or dignity, on account of some offence. Phillim. Ecc. L. 1395. *See CENSURE; DEPOSITION, § 1.*

DEPRIVATION, (explained). 1 Bl. Com. 382, 393.

DEPRIVED, (in New York Constitution, Art. I, § 6). 24 Barb. (N. Y.) 232.

DEPUTATION, SPECIAL, (to serve process). 4 Halst. (N. J.) 335.

DEPUTY.—FRENCH: *depute*; from Latin, *deputatus*.

One who governs and acts instead of another, or who exercises an office, &c., in another man's right. A deputy cannot be appointed unless the grant of the office authorizes such appointment, as where it is to one to execute by deputy, &c. A deputy differs from an assignee, in that an assignee has an interest in the office itself, and does all things in his own name, for whom his grantor shall not answer, except in special cases; but a deputy has not any interest in the office, and is only the shadow of the officer in whose name he acts. A deputy cannot make a deputy. 9 Co. 49.

DEPUTY, (power of). 1 Salk. 95.
 — (to United States congress). 5 Pet.
 (U. S.) 1, 39.

DEPUTY LIEUTENANT.—The deputy of a lord lieutenant of a county in England.

DEPUTY SHERIFF, (defined). 7 Halst. (N. J.) 159.

DEPUTY STEWARD.—A steward of a manor in England may depute or authorize another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So, an under steward or deputy may authorize another as sub-deputy, *pro hac vice*, to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare*.

DERAIGN.—There is a Norman word, *desreyner*, to prove one's case in court, from the late Latin *disrationare*. (Britt. 42a; Loysel Inst. Cout. gloss.; Schmid Ges. der Ang. gloss. s. v. *Dirationare*; Müller's Etym. Wörtl. s. v. See ARRAIGN.) Hence it signified to establish one's right, or to recover by legal proceedings. (Britt. 98b, 230a.) The word *deraign* "commeth of the French word *derayer* or *deraigner*, that is to say, to displace or to turne one out of his order. . . . So when a monke is deraigned, he is degraded and turned out of his order of religion, and become a lay man." Co. Litt. 136b.

§ 2. In the old books to "deraign a warranty paramount" seems to have meant "to enforce" or "take advantage of it." Thus, if A. conveyed land to B. with warranty, and B. conveyed it to C. with warranty, and C. was evicted and recovered lands of equal value against B., and B. recovered lands of equal value against A., then A. was said to deraign the warranty paramount. Co. Litt. 174a, 376b; Plowd. 7, 515.

DERELICT—DERELICTION.—
 LATIN: *derelinquere*, to abandon.

§ 1. Dereliction is the act of abandoning a chattel or movable; as "if one is possessed of a jewel, and casts it into the sea or a public highway, this is such an express dereliction, that a property will be vested in the first fortunate finder that will seize it to his own use." 2 Bl. Com. 9.

§ 2. SHIPS.—The term is, however, more commonly used of ships, which are said to be derelict when they are abandoned on the high seas. If the ship is salvaged, a greater amount of remuneration is frequently allowed to the salvors than in ordinary cases of salvage. (Maude & P. Mer. Sh. 495; The Cleopatra, 3 P. D. 145.) "Abandonment" here merely means "physical abandonment," not necessarily that kind of abandonment which takes place in the case of a constructive total

loss; therefore, if a derelict is salvaged, it belongs to the owner, unless he has given notice of abandonment to the underwriters. See ABANDONMENT, § 1.

§ 3. LAND.—The term is also applied to land left dry by the sea shrinking back below the usual high-water mark, or by a river changing its bed. If this dereliction is sudden and considerable, the new land, in the case of the sea or a tidal river, belongs to the government; in the case of a non-tidal river, the property in the bed and the adjoining land remains as before, so that if the river leaves its bed altogether, the old bed is divided between the riparian proprietors according to the *medium filum*, while the new bed remains the property of the person over whose land the river has made itself a course. If the dereliction is by small and imperceptible degrees, the new land goes to the owner of the adjoining land (2 Bl. Com. 262; Couls. & F. Waters 22, 62, 94; cf. Just. Inst. ii., § 23, and ALLUVION); and if the owner of the original bed of the river had a several fishery over it, he has a similar right over the new bed. Foster v. Wright, 4 C. P. D. 438.

DERELICT, (what is). 1 Newb. (U. S.) Adm. 329, 421, 449.

— (what is not). 1 Pet. (U. S.) Adm. 31.

Derivativa potestas non potest esse major primitiva (Noy Max.; Wing. Max. 66): The derivative power cannot be greater than the primitive.

DERIVATIVE.—See CONVEYANCE, § 4; EVIDENCE; SETTLEMENT (as applied to paupers).

DERIVED FROM OR THROUGH EITHER OF HIS ANCESTORS, (in statutes of descent of Maryland). 7 Cranch (U. S.) 458, 468.

DEROGATE—DEROGATION.—

§ 1. To derogate from a right, obligation or the like, is to destroy, prejudice or evade it. Thus, there is a maxim that no man can derogate from his own grant, which is chiefly applied to cases of the creation of easements by implied grant. If a man erect a house on his own land, and afterwards sell it to another, reserving the adjoining land, he cannot obstruct the windows in the house by building on the adjoining land, because the grant of the

house contains an implied grant of the easement of light to its windows, and if the grantor were allowed to obstruct them he would derogate from his grant. *Palmer v. Fletcher*, 1 Lev. 122; *Gale Easmt.* 97.

§ 2. Agreements or provisions are said to be in derogation of the marriage contract when they tend to disturb or prejudice the status of lawful marriage. Thus, a provision in a settlement for the future separation of the husband and wife is in derogation of the marriage contract, because it is calculated to facilitate the dissolution of the marriage contract, "which the policy of the law is to preserve intact and inviolate." *H. v. W.*, 3 Kay & J. 382. See IMMORALITY; SEPARATION DEEDS.

§ 3. An agreement is said to be in derogation of a statute, or of a rule of law, when it enables the parties to evade a rule made not for their benefit, but in the interest of the public. See *Savin v. Hoylake Rail. Co.*, L. R. 1 Ex. 9; *Poll. Cont.* 242.

§ 4. An alteration of, or taking away from, a contract for the sale of stocks is also called a "derogation."

DEROGATORY-CLAUSE.—A sentence or secret character inserted in a will by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained. By the law of England such a clause would be void, as tending to make the will irrevocable.—*Wharton*.

DESCEND, (defined). 128 Mass. 38, 40.

— (in a statute). 11 Serg. & R. (Pa.) 224, 232.

— (in a will). 9 East 170, 182.

DESCENDANT.—One who is descended from another; a person who proceeds from the body of another, such as a child, grandchild, &c., to the remotest degree. The term is the opposite of "ascendant" (*q. v.*)

DESCENDANT, (does not embrace collateral relations). 30 N. Y. 393.

DESCENDANTS, (defined). 28 Cal. 232, 236; 20 Ga. 480, 512; 8 Gray (Mass.) 101, 119; Amb. 396, 397; 3 Swanst. 320, 323.

— (as including every person descending from the stock). 2 Bradf. (N. Y.) 413.

— (as meaning "lineal" descendants). 1 Bradf. (N. Y.) 314, 318.

— (as synonymous with "issue"). 2 C. E. Gr. (N. J.) 475; 8 Id. 575.

DESCENDANTS, (equivalent to "next of kin"). 25 Ga. 420, 428.

— (in a statute). 9 R. I. 266, 289.

— (in a will). 3 Bro. Ch. 367, 368 8 Com. Dig. 472; 1 East 120, 129; 11 Ch D. 873.

— (means "issue of the body of the person named, of every degree"). 1 Redf. (N. Y.) 409.

DESCENDANTS OR REPRESENTATIVES, (in a will). 2 Cox C. C. 187, 188.

DESCENT is what takes place when land or some interest in land or other realty belonging to a person passes, on his death intestate, to some one related to him by consanguinity, either directly or by reference to some other person, according to certain rules of law. (Co. Litt. 13b, 237a. As to the descent of a warranty under the old law, see Litt. §§ 718, 735 *et seq.*) Descent, therefore, is opposed on the one hand to what takes place when land, on the death of a person, passes to some one else by virtue of a gift or limitation to him as *persona designata* (*q. v.*); and, on the other hand, to the devolution of personal property, which is governed by the rules of distribution (*q. v.*)

§ 2. **Lineal—Collateral.**—With reference to the nature and degree of the consanguinity, descent is said to be "lineal" when it takes place from an ancestor to a descendant (*e. g.* from father to son) or *vice versa*, and "collateral" or "transversal" when the parties are descended from a common ancestor, as in the case of uncle and nephew, cousin and cousin, &c. (See CONSANGUINITY.) It was formerly the rule in England, following the principles of the feudal system, that there should be no lineal succession of estates in the ascending line. Although this rule has been abolished both in England and in the United States, the result of it is that title by inheritance, whether in the ascending or descending line, is termed "descent."

§ 3. **Stock, or root of descent.**—The rules by which the descent of realty is governed have two objects: first, to determine the stock of descent, *i. e.* the person from whom the descent is to be traced, or, in other words, the person with reference to whom the question of consanguinity is determined; and, secondly, to settle who is to be selected from the persons related by consanguinity to the stock of descent.

§ 4. In the United States, the rules of descent are prescribed by the statutes of the several States, which, while presenting the same general features, differ widely in certain particulars. The English doctrine of primogeniture is entirely disregarded, and the distinction between male and female heirs is abolished in nearly all of the States. Under some of the statutes inheritance among collaterals is *per stirpes*, the children of a deceased parent taking the portion which would have belonged to him had he been living, but in most of the States it is provided that lineal descendants, standing in equal degree from the common ancestor, shall share equally *per capita*. For a compilation of these statutes, see 3 Washb. Real Prop. (3 edit.) 21.

The following are the rules of descent under the English statutes—

§ 5. The rule which determines the stock of descent is that in every case descent shall be traced from the purchaser, *i. e.* from the last person who acquired the land otherwise than by descent. (3 and 4 Will. IV. c. 106, § 2. See PURCHASER.) Thus, if land is conveyed or devised to A. and he dies intestate, the descent is traced from him, because he was the purchaser; again, if, on A.'s death intestate, the land descends to B., and he also dies intestate, the descent is still traced from A., because B. was not the purchaser, although he is the person from whom the land descends. This view of the operation of the act seems to us to be the correct one, but it is not universally accepted. According to Mr. Joshua Williams (notes to Watkins on Descent 119; Jurist N. S. IV. (2) 56), where a person (B.) has acquired land by descent from the purchaser (A.) and dies intestate, the person (C.) who then takes the land by descent derives his title not from B. but from the purchaser A., so that he would take the land free from B.'s specialty debts if it were not for the Acts 3 and 4 Will. IV. c. 104, making the land of every deceased owner assets for payment of his debts. The objection to this view is that the Inheritance Act does not say that every descent shall take place from the purchaser, but that where a descent takes place "the title to inherit by reason of consanguinity" shall be traced from the purchaser. (See the correspondence on this point in the Jurist N. S. IV. (2) 56, 72, 109, 120.) If, however, there is a total failure of heirs of the purchaser, the descent is traced from the person last entitled to the land. Stat. 22 and 23 Vict. c. 35, § 19.

The rules regulating the selection of the person to take by descent in a given case are divisible according to their source, and are of the following kinds—

§ 6. Descent by the common law.—

Descent according to the common law means either "literally the common law," or (more usually) the "common law as altered by the Inheritance Act." (3 and 4 Will. IV., c. 106, § 2.) The rules regulating this kind of descent are called the "canons of descent," and are as follows—*

§ 7. Fee-simple.—Descent of an estate in fee-simple. (1) Inheritances in the first place lineally descend to the issue of the purchaser, in *infinitum*, but the issue nearest in degree to the purchaser are preferred to the more remote; consequently the children of the purchaser are preferred to their own issue. (2) The male issue is admitted before the female in the same degree; for instance, sons are admitted before daughters. (3) Where two or more of the male issue are in equal degree of consanguinity to the purchaser, the eldest only shall inherit; but the females shall inherit all together. (4) The lineal descendants of any person deceased shall represent him; *i. e.* shall stand in the same place as the person himself would have done had he been living. Therefore, if the purchaser leaves a daughter, and a grandson by a deceased son, the grandson takes the land by right of representation, to the exclusion of the daughter. (See PER CAPITA; PER STIRPES.) (5) On failure of lineal descendants of the purchaser, the inheritance descends to his nearest lineal ancestor, or to the issue of such lineal ancestor, if he has died, according to the rule of representation (canon 4). (6) The paternal line is preferred to the maternal. In other words, the father and all the male paternal ancestors of the purchaser and their descendants shall be admitted to inherit before any of the female paternal ancestors or their descendants; all the female paternal ancestors and their heirs before the mother or any of the maternal ancestors of the purchaser, or her or their descendants; and the mother and all the male maternal ancestors and their descendants before any of the female maternal ancestors or their descendants. (7) A kinsman of the half blood shall inherit next after a kinsman in the same degree of the whole blood to the purchaser, and after the issue of such kinsman, when the common ancestor is a male, and next after the common ancestor, when such ancestor is a female. (See BLOOD, § 2.) (8) In the admission of female ancestors, the mother of the more remote male (paternal or maternal) ancestor, and her heirs, shall be preferred to the mother of a less remote male (paternal or maternal) ancestor and her heirs.

§ 8. Estate tail.—The descent of an estate tail follows the first four canons, unless it is barred, or unless it is limited to special heirs or to males or females, in which case the canons govern its descent so far as they are applicable. Wms. Real Prop. 105. See TAIL; and *infra*, § 11.

§ 9. Customary descent is a descent regulated by the custom of the place where the land is situated, as in gavelkind and borough-English lands (*q. v.*); other peculiar kinds of descent occur in many manors. (Wms. Seis. 93;

* See Wms. Real Prop. 100, and 1 Steph. Com. 391 *et seq.*, where the operation of these canons is fully explained and illustrated.

Elton Copyh. 117.) The Duchy of Cornwall (q. v.) has a special mode of descent. See, also, a peculiar kind of descent mentioned by Coke, by which "the shield, armorie and armes" of a nobleman descend to such of his heirs as are able to bear them. Co. Litt. 27 a.

§ 10. Trust and mortgage estates.—

An anomalous kind of descent takes place on the death of a mortgagee of land, or where a bare trustee dies intestate as to any corporeal or incorporeal hereditament of which he was seized in fee-simple. In the former case the legal personal representative of the mortgagee may, on payment of the mortgage debt, reconvey the land to the mortgagor, and, in the latter case, the hereditament vests like a chattel real in the legal personal representative of the deceased trustee. (Vendor and Purchaser Act, 1874, § 4; Land Transfer Act, 1875, § 48. See TRUSTEE. The latter provision does not apply to lands registered under the Land Transfer Act.) By the Conveyancing Act, 1881, § 30, these provisions are repealed as to persons dying after the 31st December, 1881, and a different provision is made, (as to which, see TRUSTEE.) By section 4 of the same act, where a person dies after the 31st December, 1881, leaving an uncompleted contract for the sale of land enforceable against his heir or devisee, his personal representatives have power to convey the land so as to give effect to the contract.

§ 11. Descent per formam doni.—If an estate is limited to the heirs of the body of A., a deceased person who has left two sons, B. and C., B. takes by purchase as the first donee in tail, but nevertheless the estate devolves on his death as if he had taken it by descent from A., and, therefore, on B.'s death without issue the estate devolves on C. as the heir of the body of A. This is called a "descent per formam doni," ("according to the form of the gift,") although it is in strictness neither a descent nor a purchase. Fearn Rem. 81; Co. Litt. 26 b. See Wms. Real Prop. 58; Wms. Seis. 65.

§ 12. Ex parte paterna, and materna.

—Before the Inheritance Act there were several other kinds of descent, the most important of which were descent *ex parte paterna* and *materna* (on the paternal or maternal side). If a person succeeded to land as heir to his mother and died intestate without issue, the land descended to his heir on the mother's side, i. e. to a descendant of one of his mother's ancestors. In all other cases land descended to the heirs *ex parte paterna* of the person last seized. If a person who had acquired land as heir to his mother conveyed it to a third person and then took a reconveyance to himself, he was said to break the descent, because on his death intestate the land would descend to his heirs *ex parte paterna*. (Wms. Seis. 62.) There were also other kinds of descent which have no modern interest, such as "mediate" and "immediate descent" (Collingwood v. Pace, Sir O. Bridg. 436); descent by relation and by matter subsequent (Butler and Baker's Case, 3 Co. 25; Rolle Abr. Discent, G.); ordinary and privileged descent (1 Burr. 109; see DESCENT CAST), and others (Watkins on Descent 27). See HEIR; HEREDITAMENT; INHERITANCE.

DESCENT, (distinction between "mediate" and "immediate"). 6 Pet. (U. S.) 102, 119.

—— (explained). 2 Pet. (U. S.) 58, 94.

—— (in a statute). 18 Ohio. St. 311.

—— (in copyhold custom). L. R. 4 Eq. 216.

DESCENT CAST is the same as what the older writers called a "descent which tolls entry." Where a person who had acquired land by disseisin, abatement or intrusion, died seized of the land, the descent of it to his heir took away or "toll'd" the real owner's right of entry, so that he could only recover the land by an action. (Litt. § 385 *et seq.*; Co. Litt. 237 b.) The doctrine of descent cast was abolished by Stat. 3 and 4 Will. IV. c. 27. Shelf. R. P. Stat. 228.

§ 2. The term seems to have originally meant "the happening of any descent," because the law casts the land upon the heir. Litt. § 385; Watk. Desc. 33.

DESCENT THROUGH AND FROM, (construed). 2 Pet. (U. S.) 58, 90.

DESCRIPTIO PERSONÆ.—Description of the person.

DESCRIPTION.—

§ 1. Of personal property.—A written account of the state and condition of personal property, titles, papers, and the like. It is a kind of inventory, but is more particular in ascertaining the exact condition of the property, and is without any appraisalment of it.—Bouvier.

§ 2. Of real estate.—That part of a conveyance of land which identifies the property intended to be conveyed.

DESCRIPTION, (of premises insured). 6 Cow. (N. Y.) 673; 2 Hall (N. Y.) 608, 632.

DESCRIPTION OF LAND, (in a deed). 4 Mass. 196; 7 Johns. (N. Y.) 217.

—— (in an advertisement of sale). 1 Ves. 210.

DESCRIPTION OF THE RESIDENCE, (in affidavit accompanying bill of sale). L. R. 7 Q. B. 157.

DESCRIPTIVE AND LOCATIVE CALL, (defined). 2 Wheat. (U. S.) 206, 211.

DESCRIPTIVE WARRANTS, (meaning of). 4 Binn. (Pa.) 51, 58.

DESERT THE DEMISED PREMISES, (in a statute). 3 Barn. & C. 649, 654.

DESERTED PREMISES may, in England, be recovered by the landlord in a summary way before a magistrate or justices of the peace, if they were held at a rent of three-fourths at least of their yearly value and no sufficient distress has been left by the tenant. Stats. 11 Geo. II. c. 19; 55 Geo. III. c. 52 3 and 4 Vict. c. 84; 11 and 12 Vict. c. 43 Woodf. Land. & T. 789.

DESERTED THE PREMISES, (in a statute). 3 Barn. & Ad. 684; 2 Chit. Gen. Pr. 243.

DESERTION.—

§ 1. Where a husband voluntarily, and without reasonable cause, leaves his wife, against her wish, or similarly, where the wife leaves her husband. (Browne Div. 43.) Desertion for two years affords ground [in England] for an application for judicial separation, and, in some cases, for dissolution of marriage (*q. v.*); and desertion by a husband for any time enables the wife to apply for a protection order (*q. v.*) In the United States the laws of most of the States provide, that where the desertion either of the husband or wife is continued for a certain period of time, it will be ground for divorce.

§ 2. The criminal offence of abandoning the naval or military service without license.

DESERTION, (defined). 3 Story (U. S.) 108, 113; 8 Allen (Mass.) 418, 419; 97 Mass. 327, 329.

—— (what is). 103 Mass. 577, 580.

—— (what is not). 3 Esp. 71, 72, 269, 270.

—— (in divorce act). 87 Ill. 250.

—— (in a statute). 5 Q. B. D. 31.

DESERTION FROM THE MARRIAGE RELATION, (defined). 43 Conn. 313, 318.

DESERTION OF A SEAMAN.—The abandonment of a vessel by a sailor engaged for a voyage, before his time has expired, and without permission.

DESERTION, WILFUL, (what is not). 115 Mass. 336, 342.

DESIGN.—In the law of evidence, purpose or intention combined with plan, or implying a plan in the mind.—*Burrill*.

DESIGN, (defined). 4 Wash. (U. S.) 48, 52; 3 Wheel. Am. C. L. 427.

DESIGNATED, (in a statute). 3 Harr. (N. J.) 181.

Designatio justiciariorum est a rege; jurisdictio vero ordinaria a lege (4 Inst. 74): The appointment of justices is by the king, but their ordinary jurisdiction by the law.

DESIGNATIO PERSONÆ. — See PERSONA DESIGNATA.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum (Co. Litt. 210): The specifying of one is the exclusion of another, and that which is expressed makes that which is understood to cease.

DESIGNATION.—An expression by which a person or thing is denoted in a will without using the name.

DESIGNED, (defined). 2 Mass. 128, 131.

DESIGNEDLY AND UNLAWFULLY, (in an indictment). 12 Metc. (Mass.) 44, 448.

DESIGNS.—Copyrights and patents for. See COPYRIGHT, § 4; PATENTS; REGISTRATION OF DESIGNS.

DESIGNS, (in copyright act). 2 Atk. 93.

DESIRE, (in a will). 1 Cai. (N. Y.) 84; 2 Vern. 466, 467.

DESIRE AND WILL, (in a devise). 3 Ves. & B. 198.

DESIRE OR REQUEST, (in a will). 8 Com. Dig. 996, 998.

DESIRING AND WILLING, (in a devise). 1 Atk. 469, 470, 618, 620.

DESLINDE.—A term used in the Spanish law, denoting the act by which the boundaries of an estate or portion of a country are determined.

DESMEMORIADOS.—A Spanish law term, signifying persons deprived of their memory.

DESPACHEURS.—Persons appointed to settle cases of average.

DESPATCHES.—Communications concerning governmental affairs made officially.

DESPERATE DEBT.—A hopeless debt; an irrecoverable obligation.

DESPERATE DEBT, (in an inventory of an executor or administrator). 11 Wend. (N. Y.) 363, 365.

DESPITUS.—A contemptible person.—*Wharton*.

DESPOJAR OR DESPOIL, (defined). 1 Cal. 254, 268.

DESPONSATION.—The act of betrothing persons to each other.

DESPOT.—GREEK: *δεσπότης*, a governor; a ruler.

An absolute prince; one who governs with unlimited authority. The word in its origin signified the same with the Latin *herus*, and the English "master." Despot is at present a title of quality given to the princes of Wallachia, Servia, and some of the neighboring countries.

DESPOTISM.—Absolute power.

DESPOTIZE.—To act as a despot.—*Webster*.

DESRENABLE.—Unreasonable.

DESTINATION.—(1) The intended application of a thing.—*Bouvier*. (2) The place where the voyage of a ship is to end.

DESTROY, (in an indictment for mayhem). 67 N. Y. 15.

DESTROY A VESSEL, (synonymous with "cast away"). 4 Dall. (U. S.) 412, 417; 1 Wash. (U. S.) 363, 372; 3 *Id.* 146.

DESTROY ANY VESSEL, (in a statute). 1 Chit. Cr. L. 154.

DESTRUCTION.—Used in the old English law, generally, with the same meaning as waste.

DESUBITO.—To weary a person with continual barkings, and then to bite, provided against by old laws.

DESUETUDE.—Disuse.

DETACHIARE.—To seize or to take into custody another person's goods, &c., by attachment or other process of law.

DETAINDER.—

§ 1. The wrongful keeping of a person's goods is called an "unlawful detainer" although the original taking may have been lawful. As, if one distrains another's cattle, *damage feasant*, and before they are impounded the owner tenders sufficient amends; now, though the original taking was lawful, the subsequent detention of them after tender of amends, is not lawful, and the owner has an action of replevin to recover them, in which he will recover damages for the *detention*, and not for the *caption*, because the original taking was lawful. 3 Steph. Com. (7 edit.) 423.

§ 2. When a person is under arrest in a civil proceeding and another writ for his arrest is lodged with the sheriff or other officer before his discharge, it is executed by detaining him. This is called a "detainer." (Arch. Pr. 694.) As to detainer of lands, *see* FORCIBLE DETAINDER.

DETENTION.—The act of keeping back or withholding, either accidentally or by design, a person or thing. *See* DETAINDER, § 1.

DETENTION IN A REFORMATORY, as a punishment or measure of prevention, is where a juvenile offender is sentenced to be sent to a reformatory school, to be there detained for a certain period of time. 1 Russ. Cr. & M. 82.

DETENTION OF SHIPS.—In England the Merchant Shipping Act, 1876, contains provisions for the detention by the board of trade of unsafe ships (*i. e.* ships unfit to proceed to sea without serious danger to human life), and for the appointment, by the board, of officers called "detaining officers." §§ 6, 12. *See* COURTS OF SURVEY.

DETERGENT, (defined). 7 Fed. Rep. 103.

DETERMINABLE—DETERMINE.—An estate is said to determine when it comes to an end, whether by limitation, effluxion of time, merger, surrender, or otherwise. When an estate is subject to a condition, defeasance, or the like, it is said to be determinable on the happening of the event specified in the condition. Thus, an estate given to a woman during widowhood is determinable on her marrying again.

DETERMINATION.—(1) The bringing to an end, or concluding, a privilege, right or authority. (2) The decision of a question or controversy.

DETERMINATION OF THE RISK INCURRED, (construed). 8 East 273, 291.

DETERMINE, (does not mean "adjudge"). 14 East 1, 29.

— (in a statute). 1 Dowl. & Ry. 10, 12.

DETERMINED LEGALLY, (in an agreement). 1 Greenl. (Me.) 84, 88; 1 Wheel. Am. C. L. 219.

DETESTATIO.—A term used in the civil law, denoting a summoning made or notice given in the presence of witnesses.—*Burrill*.

DETINET.—He detains. (1) A species of action of debt, which lay for the specific recovery of goods, under a contract to deliver them.—1 *Reeves* 159. No longer a technical expression.—*Wharton*. (2) A word used in the old pleadings in actions of debt brought by or against a party other than the one to or from whom the debt was originally due.

DETINUE.—A personal action at law arising *ex delicto*. It might be maintained by one who had either an absolute or a special property in goods, against another who was in actual possession, by delivery, finding, &c., of such goods, and refused to redeliver them. The plaintiff sought to recover the goods *in specie*, or, on failure thereof, the value, and also damages for the detention. The grounds of the action are: (1) A property in the plaintiff,

either absolute or special (at the time of action brought), in personal goods which are capable of being ascertained; (2) a possession in the defendant by bailment, finding, &c.; (3) an unjust detention on the part of the defendant.—*Wharton*.

DETINUE, (action of, defined). 9 Port. (Ala.) 151, 154.

DETINUIT.—He detained.

DETRACTARI.—To be torn in pieces by horses.—*Fleta* l. 1 c. 37.

DETUNICARI.—To discover or lay open to the world.—*Matt. Westm.* 1240.

Deus solus hæredem facere potest, non homo (Co. Litt. 7): God alone, and not man, can make an heir.

DEUTEROGAMY.—GREEK: δευτερος, second, and γάμος, marriage.

A second marriage.

DEVADIATUS, or DIVADIATUS.—An offender without sureties or pledges.—*Cowell*.

DEVASTAVIT ("he has wasted [the assets]") is the name given to any violation or neglect of duty by an executor which makes him personally responsible to persons having claims on the assets, *e. g.* creditors and legatees. Thus, if an executor applies the assets in satisfaction of a debt due by himself to a third person, or collusively sells the testator's goods at an undervalue, or pays claims which he is not bound to satisfy, he is guilty of a *devastavit*. *Wms. Ex.* 1658 *et seq.*

§ 2. In ordinary cases the remedy for a *devastavit* is by action to make him responsible, or to administer the estate under the direction of the court. See **ADMINISTRATION**.

DEVASTAVIT, (defined). 57 Ala. 529.
—— (action for, evidence). 4 Halst. (N. J.) 379.

DEVENERUNT.—An obsolete writ, heretofore directed to the escheator on the death of the heir of the king's tenant, under age and in custody, commanding the escheator that, by the oaths of good and lawful men, he enquire what lands and tenements, by the death of the tenant, came to the king.—*Wharton*.

DEVEST.—See **DIVEST**.

DEVIATION, in the law of marine insurance, happens where there is a wilful

and unnecessary departure from the due course of the voyage of a ship, for any, even the shortest, time. A deviation discharges the underwriters from liability in ordinary cases (*Smith Merc. L.* 374), but in some cases a deviation is justifiable, *e. g.* for the purpose of saving life. *Scaramanga v. Stamp*, 4 C. P. D. 316; 5 *Il.* 295.

§ 2. **Railway**.—In the law of railways, a deviation is a lateral alteration of the line of a railway. The Railways Clauses Act, in England, authorizes a company which is subject to its provisions to deviate from the line marked on the deposited plans within the limits delineated thereon. *Hodg. Railw.* 341 *et seq.*

§ 3. **In contracts**.—A departure from the original plan made during the progress of a work.

DEVIATION, (defined). 9 Mass. 436, 447; 3 Chit. Com. L. 471.

—— (what is). 2 Paine (U. S.) 82; 1 Yeates (Pa.) 114, 118.

—— (what is not). 2 Mas. (U. S.) 230, 234; Sprague (U. S.) 141; 1 Sumn. (U. S.) 400; 2 Wash. (U. S.) 80; 3 Wheat. (U. S.) 159.

—— (from the contract of insurance discharges the underwriters). 10 Miss. 340.

—— (necessity alone can sanction). 7 Cranch (U. S.) 26.

—— (of a ship, when allowed). 1 Newb. (U. S.) Adm. 449.

—— (to avoid marine insurance policy.) 1 Edm. (N. Y.) Sel. Cas. 290.

DEVICE.—See **PATENTS**; **REGISTRATION OF DESIGNS**; **TRADE-MARK**.

DEVICE, (in act against lotteries). 49 Ala. 396.

DEVIL ON THE NECK.—An instrument of torture, formerly used to extort confessions, &c. It was made of several irons, which were fastened to the neck and legs, and wrenched together so as to break the back.—*Cowell*.

DEVISAVIT VEL NON.—In chancery practice, where an heir-at-law is a party to proceedings affecting the real estate of his ancestor under an alleged will, he is generally entitled to an issue *devisavit vel non*, *i. e.* to have the question, whether his ancestor devised the lands or not, tried in a common law court before a jury. *Dan. Ch. Pr.* 772, 942.

DEVISE—DEVISEE.—

§ 1. A devise is a gift of land or other realty by will, *e. g.* "I devise Blackacre to A. for life, and after his death to B.;" this gives A. an estate for life and B. the fee-simple. (See **ESTATE**.) A. and B. are called "devisees."

§ 2. **Specific, or residuary**.—A devise may be either specific (as in the above in-

stance) or residuary, *e. g.* "I devise the residue of my land and realty to C.," which gives C. all lapsed and undisposed-of real property belonging to the testator at his death. But in some respects every residuary devise is in effect specific, for where the testator's personal estate is insufficient for the payment of his debts, the specific devisees must contribute towards their payment ratably with the residuary devisee (*Hensman v. Fryer*, L. R. 3 Ch. 420; *Lancefield v. Iggulden*, 10 *Id.* 136), while in the case of personalty the debts are payable out of the residue in exoneration of the legacies. See ADMINISTRATION, § 2.

§ 3. **EXECUTORY.**—An executory devise is such a direct (*i. e.* not created by way of use) limitation by will of a contingent interest in land as would be void at common law if made by deed; executory devises are therefore opposed on the one hand to limitations allowed at common law (such as contingent remainders), and on the other hand to limitations by use (*See USE*), though they scarcely differ from the latter except in form. Thus, if A. devises land to B. (a minor) and his heirs, but if he should die under twenty-one, then to C., this is an executory devise to C., the effect of which might also be produced by a shifting use, though not by a conveyance at common law, because no limitation over can follow the limitation of an estate in fee-simple. (*Wms. Real Prop.* 312; *Wats. Comp. Eq.* 1334. See *Fearne Rem.* 318 *et seq.*, who, with other writers, includes executory bequests under the same head. See, also, LEGACY; LIMITATION.) Executory devises must not transgress the rule against perpetuities, or, in England, the provisions of the *Thellusson Act*.

DEVISE, (defined). 89 *Ill.* 246.

— (distinguished from "bequest"). 21 *N. H.* 514.

— (in married woman's act). 21 *Barb.* (N. Y.) 551, 561.

— (in statute of frauds). L. R. 4 *App. Cas.* 79.

— (to creditor). 1 *Harr. & G. (Md.)* 484; 2 *Harr. & J. (Md.)* 63.

DEVISE, I, (in a will synonymous with "I will," or "my mind is"). 2 *Burr.* 1027, 1031.

DEVISE, EXECUTORY, (defined). 2 *Gr. (N. J.)* 54.

DEVISE OF LANDS, (in a statute). 2 *Harr. (N. J.)* 465.

DEVEISED, ADAPTED AND DESIGNED, (in a statute). 2 *Mass.* 131, 132.

DEVISEE, (accompanying a bequest of personalty). *Hoffm. (N. Y.)* 202, 212.

— (first and next, defined). 2 *South. (N. J.)* 710.

DEVISEES, (as meaning "legatees"). 6 *Ired. (N. C.) Eq.* 173, 176.

— (in a will). 23 *Hun (N. Y.)* 305.

DEVISOR.—One who makes a will of lands.

DEVOIRE.—A duty; a tax of custom. 34 *Ed. III. c.* 18.

DEVOLUTION.—A term used in the ecclesiastical law, to denote the transfer to another of a right or power which has become forfeited through the act or omission of the person in whom it was vested.

DEVOLVE, (defined). 2 *L. J. (N. S.) Ch.* 167, 168; 1 *Myl. & K.* 647.

DEXTRARIUS.—One at the right hand of another.

DEXTRAS DARE.—To shake hands in token of friendship; or to give up oneself to the power of another person.

DI COLONNA.—A term used in the Italian maritime law, to designate a contract between the owner of a ship, the captain, and the mariners, who agree that the voyage shall be for the benefit of all. The New England whalers are owned and navigated in this manner and under this species of contract.—*Bouvier*.

DI. ET FI.—An abbreviation of *dilecto et fideli* in old writs.

DIACONATE.—The office of a deacon.

DIACONUS.—A deacon.

DIAGNOSIS.—The discovery of the source or cause of a patient's illness.

DIALECTICS.—That branch of logic which teaches the rules and modes of reasoning.

DIALLAGUE.—A rhetorical figure in which arguments are placed in various points of view, and then turned to one point.—*Encyc. Lond.*

DIALOGUS DE SCACCARIO.—This has generally passed as the work of Gervase of Tilbury; but Mr. Madox thinks it was written by Richard Fitz-Nigel, Bishop of London, who succeeded his father in the office of treasurer, in the reign of Richard I., and was therefore qualified for such an undertaking. This book treats, in the way of dialogue, of the

whole establishment of the exchequer as a court and an office of revenue; giving an exact and satisfactory account of the officers and their duties, with all matters concerning that court, during its highest grandeur, in the reign of Henry II. This is done in a style somewhat superior to the Law-Latinity of those days. (1 Reeves Hist. Eng. Law 220.)—*Wharton*.

DIANATIC.—A logical reasoning in a progressive manner, proceeding from one subject to another.—*Encyc. Lond.*

DIARIUM.—Daily food, or as much as will suffice for the day.—*Du Cange*.

DIATIM.—Daily; from day to day.—*Spel. Gloss.*

DICA.—A tally for accounts.—*Cowell*.

DICAST.—An officer in ancient Greece answering nearly to our jurymen.

DICTA, (defined). 62 N. Y. 47, 58.

DICTATION, (defined). 16 La. Ann. 219, 220.

DICTATOR.—A magistrate invested with unlimited power, and created in times of national distress and peril. Among the Romans, he continued in office for six months only, and had unlimited power and authority over both the property and lives of the citizens.

DICTORES.—Arbitrators.

DICTUM.—An observation by a judge on a legal question suggested by a case before him, but not arising in such a manner as to require decision by him. It is, therefore, not binding as a precedent on other judges, although it may be entitled to more or less respect. Dictum is an abbreviation of *obiter dictum*, a remark by the way.

DICTUM, (what is not). 4 Heisk. (Tenn.) 419, 422.

DID TAKE AND CARRY AWAY, (in an indictment for larceny). 7 Gray (Mass.) 443.

DIE BY HIS OWN HAND, (in a policy of insurance). 1 Dill. (U. S.) 403, 404; 41 Ga. 338, 363; 6 Bush (Ky.) 268; 26 La. Ann. 404; 55 N. Y. 169, 173; 7 Heisk. (Tenn.) 567, 570; 5 Am. Rep. 535, 540; 14 Id. 215, 217; 19 Id. 623, 624; 21 Id. 549; 5 Man. & G. 639, 652.

DIE BY SUICIDE, (in a policy of insurance). 102 Mass. 227, 230.

DIE, IF ONE OF THEM SHOULD, (in a will). 1 Hall (N. Y.) 1; 8 Wheel. Am. C. L. 409.

DIE LEAVING A CHILD OR CHILDREN, (in a will). 41 Ga. 58, 59.

DIE LEAVING ISSUE, (in a will). L. R. 20 Eq. 220.

DIE SEIZED, (in a will). 9 Ch. D. 42.

DIE UNMARRIED OR WITHOUT CHILDREN, (in a will). L. R. 7 H. L. 388.

DIE WITHOUT CHILDREN, (in a will). 5 Day (Conn.) 517, 520.

DIE WITHOUT HEIR, (in a devise). 32 Md. 101.

DIE WITHOUT ISSUE, (in a will). 6 Port. (Ala.) 319, 327; 32 Barb. (N. Y.) 328, 332; 20 How. (N. Y.) Pr. 41; 4 Paige (N. Y.) 341; 2 Bro. C. C. 553, 557; 1 Ch. D. 346; 4 Id. 182; L. R. 20 Eq. 220; 17 Ves. 479, 482.

DIE WITHOUT LEAVING ISSUE, (in a will). Cowp. 410, 412; 12 East 253, 257; 12 Ch. D. 205, 751.

DIE WITHOUT WILL OR LAWFUL ISSUE, (in a devise). 6 Serg. & R. (Pa.) 460, 461.

DIEI DICTIO.—The notice given by a Roman magistrate of his intention to impeach a certain citizen (whom he mentioned by name), of a certain crime, before the people, on a certain day.—*Burrill*.

DIEM CLAUSIT EXTREMUM.—A special writ of *extendi facias*, or extent in chief, issuing after the death of the king's debtor, against his lands and chattels. It sets out with stating the death of the debtor, from whence it derives its name. Tidd Pr. 1057; West Ext. 319; Man. Exch. Pr. 9; Crown Suits Act, 1865, § 47. See **EXTEND**.

DIES.—Day; a day; the day. Used principally in the following phrases and maxims—

DIES A QUO.—The day from which. The day from which a transaction or the computation of a period of time begins; the commencement of it; the conclusion being termed the *dies ad quem*, the day to which.

DIES AMORIS.—The day of love. The appearance day of the term on the fourth day, or *quarto die post*. It was the day given by the favor and indulgence of the court to the defendant for his appearance, when all parties appeared in court, and had their appearance recorded by the proper officer.

DIES CEDIT.—The day begins; *dies venit*, the day has come. Two expressions in Roman law which signify the vesting or fixing of an interest, and the interest becoming a present one. Sand. Just. (5 edit.) 225, 232.

DIES COMMUNES.—Common days in banc; regular appearance days; common return days.

DIES DATUS.—A day given. The day of respite given to a defendant. *Dies datus in banco*, a day in bank. *Dies datus partibus*, a continuance. *Dies datus prece partium*, a day given on prayer of the parties.

DIES DOMINICUS.—The Lord's day; Sunday.

Dies dominicus non est juridicus (Co. Litt. 35): A dominical day [i. e. a Sunday] is not a court day.

DIES EXCRESCENS.—The added day in leap-year. See **BISSEXTILE**.

DIES FASTI, or NEFASTI.—Business days, holidays and half-holidays. For the purpose of the administration of justice all days were divided by the Romans into *fasti* and *nefasti*. *Dies fasti* were the days on which the praetor was allowed to administer justice in the public courts. *Dies nefasti* were days on which neither courts of justice nor *comitia* were allowed to be held, and which were dedicated to other purposes.

DIES GRATIÆ.—In old English law, a day of grace, or favor. Co. Litt. 134 b.

Dies inceptus pro completo habetur: A day begun is held as complete.

Dies incertus pro conditione habetur: An uncertain day is held as a condition.

DIES INTERCISI.—In the Roman law, some of the *dies fasti* on which *comitia* could be held during a part of the day.

DIES JURIDICUS.—A court day.

DIES LEGITIMUS.—A lawful court day; an appearance day; a term day.

DIES MARCHIÆ.—The day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

DIES NEFASTI.—See **DIES FASTI**.

DIES NON, or DIES NON JURIDICUS—A day on which no legal business can be transacted. Such is Sunday, Christmas day, and other legal holidays. See **VACATION**.

DIES NON JURIDICUS, (defined). 74 N. C. 187, 193.

DIES PACIS REGIS.—Days of the king's peace. The Saxons and Normans divided the year between the church and the king, calling those days which were assigned to the former, *dies pacis ecclesiæ* (days of the peace of the church), and the others, *dies pacis regis* (days of the king's peace)

DIES SOLARIS.—A solar day, as distinguished from *dies lunaris*, a lunar day; both composing an artificial day.—*Bract.* 264.

DIES UTILES.—Available days; useful days; days upon which a party might apply to the judge for an inheritance coming to him.—*Calv. Ler*

DIET.—(1) A deliberative assembly of princes or estates; (2) food; (3) a day fixed for the trial of a criminal cause; (4) an appearance day.

DIETA.—A day's journey; a day's work; a day's expenses.

DIEU ET MON DROIT.—God and my right. The motto of the royal arms of England, first assumed by Richard I.

DIEU SON ACTE.—The visitation of God. Words often used in the law. It is a maxim that the act of God, or inevitable accident, shall prejudice no man (*actus Dei nemini facit injuriam*). See **ACT OF GOD**.

DIFFACERE.—To destroy; to disfigure or deface.

DIFFERENCES BETWEEN THEM, (in a submission to arbitration). 17 Wend. (N. Y.) 410, 415.

Difficile est ut unus homo vicem duorum sustineat (4 Co. 118): It is difficult that one man should sustain the place of two.

DIFFORCIARE RECTUM.—To take away or deny justice.

DIG A CANAL THROUGH GRANTOR'S LAND, (in a deed). 5 Mas. (U. S.) 195.

DIGAMA, or DIGAMY.—Second marriage; marriage to a second wife after the death of the first; as "bigamy," in law, is having two wives at once. Originally, a man who married a widow, or married again after the death of his wife, was said to be guilty of bigamy. Co. Litt. 40 b, n.

DIGEST.—

§ 1. In jurisprudence, a digest properly means a collection of rules of law on concrete cases, as opposed to a code, which consists of abstract rules of law. In other words, a code lays down principles, while a digest gives examples of their application to certain combinations of facts. A digest may be either a legislative work (as the Digest of Justinian), or it may be the work of a private author. See **CODE**.

§ 2. In English phraseology, digest sometimes means (1) a collection of head-notes of decided cases, arranged either alphabetically or systematically, (the older digests—such as those of Rolle and Brooke—were called "abridgments;" the modern abridgments—such as that of Bacon—are short treatises on various branches of the law, arranged alphabetically;) and some-

times (2) a collection of principles or abstract rules of law, made by a private author, and which, if promulgated by the legislature, would be called a "code;" such are Stephens' Digests of the Criminal Law and of the Law of Evidence.

DIGGING, EXECUTING THE, (in a contract). 1 N. Y. 316.

DIGNITARY.—A clergyman advanced to be a bishop, dean, archdeacon, prebendary, &c. But there are prebendaries without cure or jurisdiction, who are not dignitaries. 3 Inst. 155.

DIGNITY.—

§ 1. A dignity, in the English law, is the right to bear a title of nobility or honor. Some dignities, such as those of peers and baronets, are created either by writ or by letters-patent; a knight is created by corporeal investiture. Co. Litt. 165 a; 1 Bl. Com. 272, 396.

§ 2. Dignities are either for life, such as knighthood, or of inheritance, such as baronetcies and ordinary peerages. A dignity of inheritance may also exist by prescription. Co. Litt. 16 b.

§ 3. A dignity of inheritance is an incorporeal hereditament. (*Id.* 165 a; 2 Bl. Com. 37.) It is generally limited either to the heirs or the heirs of the body of the grantee, and follows the rules governing the ordinary descent of land. If a dignity is conferred on a man by patent, without mentioning his heirs, he has a dignity for life, without inheritance. (Co. Litt. 9 b, 16 b.) It was resolved by the House of Lords in Lord Wensleydale's case that a peer for life has no right to sit and vote in the House of Lords. (2 Steph. Com. 607.) By the Appellate Jurisdiction Act, 1876, however, the crown is empowered to appoint life-peers under the title of Lords of Appeal in Ordinary. (*See* LORDS OF APPEAL.) If, however, a man holds an earldom to him and the heirs of his body, and dies leaving only daughters, the dignity is in suspense or abeyance until the crown declares which daughter shall hold it during her life. 2 Bl. Com. 216. *See* ABEYANCE, § 3; OFFICE.

DIJUDICATION.—Judicial distinction.

DILACION.—In the Spanish law, time granted either by the law, or by a judge, to enable parties to answer a demand or prove some fact in dispute.

DILAPIDATIONS.—In English ecclesiastical law, an incumbent who incurs dilapidations, *i. e.* allows the buildings of the benefice to fall into ruin, or pulls them down, or commits waste on the timber or lands of the benefice, is liable, in the ecclesiastical courts, to be punished for so doing, and to be compelled to make good the injury. He and his personal representatives are also liable to an action at law by his successor in the benefice. (Phillim. Ecc. L. 1459, 1611; 2 Steph. Com. 713.) As to the surveying of dilapidations and loans to incumbents to exe-

cute repairs, *see* the Ecclesiastical Dilapidations Acts of 1871 and 1872. *See* WASTE.

Dilationes in lege sunt odiosæ.—Delays in law are hateful.

DILATORY PLEA.—*See* PLEA.

DILATORY PLEA, (aid-prayer is a). 2 Bos. & P. 384, 388.

DILATORY PLEAS, (defined). 3 Bl. Com. 301.

DILIGENCE.—

§ 1. Care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety; but the law recognizes only three degrees of diligence: (1) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons of less than common prudence, or indeed of no prudence at all, take of their own concerns. The civil law is in perfect conformity with the common law. It lays down three degrees of diligence: ordinary (*diligentia*), extraordinary (*exactissima diligentia*), slight (*levissima diligentia*). Story Bailm. 19. *See* BAILEE; NEGLIGENCE.

§ 2. In the Scotch law, diligence means execution or process.—*Bell Dict.*

DILIGENCE, (what necessary in a bailee). 2 Ld. Raym. 909, 918.

DILIGENCE, DUE, (what is). 1 Pet. (U. S.) 578, 583; 9 *Id.* 33.

DILIGENCE, NECESSARY, (defined). 57 Me. 308, 312.

DILIGENCE, ORDINARY, (when bailee liable for). 2 Murph. (N. C.) 373; 2 Wheel. Am. C. L. 129.

DILIGENCE, REASONABLE, (what is). 13 Wend. (N. Y.) 133, 135; 21 *Id.* 643, 647.

DILIGENT INQUIRY, (what is). 1 Meigs (Tenn.) 68, 70.

DILIGENTLY INQUIRE, (in oath of grand jurors). 1 Dall. (U. S.) 236.

DILIGIATUS.—Outlawed; an outlaw.

DILLIGROUT.—Pottage formerly made for the king's table on the coronation day. There was a tenure in serjeantry, by which lands were held of the king by the service of finding this pottage at that solemnity. 39 Hen. III.

DIME.—The tenth part of a dollar; a silver coin of the value of ten cents.

DIMETÆ.—The ancient Latin name of the people who inhabited Carmarthenshire, Pembrokeshire and Cardiganshire.

DIMIDIA—DIMIDIUM—DIMIDIUS.—Half; a half; the half.

DIMIDIETAS.—The moiety or half of a thing.

DIMINUTIO.—Diminution; loss or deprivation. See *CAPITIS DIMINUTIO*; *DIMINUTION*.

DIMINUTION.—Where a record in a proceeding is ordered to be sent or certified by an inferior to a superior court for the purpose of review, and the record is not completely or truly certified, the party injured thereby may allege a diminution of the record (*i. e.* its incompleteness), and a *certiorari* will be awarded. Archb. Pr. 484; Archb. Cr. Pl. 203; 4 Bl. Com. 390.

DIMINUTION, (*certiorari* to complete the record on). South. (N. J.) 364.

DIMISI—DIMISIT.—I have demised; he has demised. The operative words in old Latin leases.

DIMISSORY LETTERS.—Where a candidate for holy orders has a title of ordination in one diocese in England, and is to be ordained in another, the bishop of the former diocese gives letters dimissory to the bishop of the latter to enable him to ordain the candidate. Holthouse citing Cowell; Phillim. Ecc. L. 121 *et seq.* See *APOSTLES*; *TITLE*.

DINARCHY.—A government of two persons.

DIOCESAN.—Belonging to a diocese; a bishop, as he stands related to his own clergy or flock.

DIOCESAN COURTS.—Ecclesiastical courts taking cognizance of all matters arising within the diocese of each bishop. They consist of the Consistorial Court (*q. v.*), the courts of one or more commissaries (*q. v.*), and the Courts of Archdeacons, exercising general or limited jurisdictions, according to the terms of their patents, or to local custom, or to the authority of recent legislation. Phillim. Ecc. L. 1202. See *PROVINCIAL COURTS*.

DIOCESE.—A district subject to a bishop's jurisdiction, and divided into archdeaconries (*q. v.*) 1 Bl. Com. 111. See *PROVINCE*.

DIOICHIA.—The district over which a bishop exercised his spiritual functions.

DIPLOMA.—(1) A royal charter or prince's letters-patent; (2) an instrument

given by colleges and societies, on commencement of any degrees; (3) a license for a clergyman to exercise the ministerial function, or a physician, &c., to practice his art.—*Wharton*.

DIPLOMA, (proof of). 25 Wend. (N. Y.) 469, 470.

DIPLOMACY.—The conducting of negotiations between nations by means of ambassadors, envoys, and the like, or by correspondence.

DIPLOMATIC AGENTS.—A general term including ambassadors, ministers, legates, nuncios, envoys, *chargés d'affaires*, and other public officers commissioned to superintend and transact the affairs of the government employing them, in a foreign country.

DIPLOMATICS.—The art of judging of ancient charters, public documents, or diplomas, &c., and discriminating the true from the false.—*Encyc. Lond.*

DIPSOMANIA.—A disease, generally caused by intemperate habits, but sometimes hereditary, which irresistibly impels the victim to drink until he becomes intoxicated. 1 Bish. Cr. L. § 304.

DIPSOMANIAC.—One who has an irresistible desire for alcoholic liquors.

DIRECT.—An epithet for the line of ascendants and descendants in genealogical succession, opposed to "collateral." Collateral relationship, is relationship through another branch, as cousins, &c. See *COLLATERAL DESCENT*.

DIRECT, (in a charter-party). 6 Blatchf. (U. S.) 533.

— (in a statute, as meaning "appoint"). 6 Barn. & C. 23, 26.

DIRECT AND REGULATE, (in a statute). 9 Dowl. & Ry. 7, 10.

DIRECT EVIDENCE.—Evidence directly proving any matter, as opposed to circumstantial evidence, which is often called "indirect." It is usually conclusive, but, like other evidence, it is fallible, and that on various accounts. It is not to be confounded with primary evidence as opposed to secondary, although in point of fact it usually is primary.—*Brown*.

DIRECT EXAMINATION.—The examination in chief of a witness. *See* EXAMINATION.

DIRECT INTEREST, (defined). 1 Ala. 65, 72.
DIRECT PAYMENT, (defined). 33 Cal. 161, 166.

DIRECT TAX, (what is). 7 Wall. (U. S.) 433; 8 *Id.* 533, 543.

— (what is not). 3 Dall. (U. S.) 172, 173; 23 Wall. (U. S.) 331, 347.

DIRECT TAXES, (in constitution of the United States). 5 Wheat. (U. S.) 317.

DIRECT, USUAL AND CUSTOMARY WAY, (in a declaration). 6 Bing. 716, 725.

DIRECTED TO BE SOLD, (in a will). 24 Wend. (N. Y.) 658, 659.

DIRECTING OR ASSISTING A CAPTURE, (in a royal proclamation). 6 East 220, 233; 13 *Id.* 574, 586.

DIRECTION.—

§ 1. **Trial.**—When an action is tried before a jury, and a question of law arises on which the verdict of the jury partly depends, the judge directs them on the subject, *i. e.* tells them what the law is, and they find accordingly. If the judge directs them erroneously, this is a misdirection, and may be a ground for granting a new trial. *See* TRIAL.

§ 2. **Payment into court.**—When money is to be paid into court in the English Chancery Division, the paymaster-general issues what is called a “direction to pay in,” which is in form a certificate by him specifying the date of the order, request, &c., under which the payment is to be made, the sum to be paid in, the person to pay it in, and the title of the cause, matter or account to the credit of which it is to be placed. This forms the authority to the Bank of England to receive and deal with the money. Chanc. Funds Comm. Rep. (1864), App. 34; Chancery Funds Rules, 1874, § 25 *et seq.* *See* PAYMENT INTO COURT.

§ 3. **In equity pleading.**—That part of the bill containing the address to the court. *See* BILL OF COMPLAINT, § 1.

DIRECTION, (defined). 12 Cush. (Mass.) 128, 130.

DIRECTION OF A LETTER, (what is not sufficient proof of notice of the dishonor of a bill). 1 Ry. & M. 149, 249.

DIRECTION OF A WRIT, (defect in). 17 Johns. (N. Y.) 63.

DIRECTLY, (defined). 14 East 1, 98, 161.

DIRECTLY FROM EUROPE, (defined). 4 Halst. (N. J.) 63.

DIRECTLY GOING, (means “going on a direct voyage”). 6 Binn. (Pa.) 219, 225.

DIRECTOR.—A director of a corporation is a person elected by the shareholders or otherwise appointed to superintend the management of the company's affairs.

There are usually several directors, with power for a certain number of them to act without the others. (*See* QUORUM.) The directors are the agents of the company, and it is bound by all acts done by them within the scope of their authority. (Lind. Comp. 256, 567.) They are not trustees in the proper sense of the word, though the two words are often used interchangeably. *Smith v. Anderson*, 15 Ch. D. 275. *See* TRUSTEE; *also*, ARTICLES OF ASSOCIATION; COMPANY; CORPORATION; QUALIFICATION.

DIRECTOR OF PUBLIC PROSECUTIONS.—By the English Prosecution of Offences Act, 1879, (which came into operation on the 1st January, 1880,) provision is made for the appointment of an officer to be called the “director of public prosecutions,” whose duty it is, subject to the superintendence of the attorney-general, to institute, undertake, carry on or give advice or assistance in criminal proceedings which appear to be of importance or difficulty, or in which special circumstances, or the refusal or failure of a person to proceed with a prosecution, appear to render the action of the director necessary to secure the due prosecution of an offender.

DIRECTOR OF THE MINT.—An officer having the control, management and superintendence of the mint and its branches. He is appointed by the president, by and with the advice and consent of the senate.

DIRECTORS, (of bank, liability of). 6 Paige (N. Y.) 497.

— (of bank, powers of). 1 Gr. (N. J.) 255, 352.

— (of bank, rights of). 12 Wend. (N. Y.) 183, 185.

— (of company, duties of). 1 Edw. (N. Y.) 513.

— (of corporation are agents of). 10 Pet. (U. S.) 368, 382.

— (of corporation, liability of). 3 Paige (N. Y.) 222; 5 *Id.* 607.

DIRECTORY.—A provision in a statute, rule of procedure, or the like, is said to be directory when it is to be considered as a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed. The general rule is, that the prescriptions of a statute relating to the performance of a public duty are so far directory, that though neglect of them may be punishable, yet it does not affect

the validity of the acts done under them, as in the case of a statute requiring an officer to prepare and deliver a document to another officer on or before a certain day. *Maxw. Stat.* 330 *et seq.*

DIRECTORY. (clause, in a will). 8 *Com. Dig.* 997; 12 *Ves.* 218, 234.

— (when a statute is). 5 *Cranch* (U. S.) 234; 11 *Wheat.* (U. S.) 184, 190; 12 *Id.* 64; 2 *Gr.* (N. J.) 484; 2 *Harr.* (N. J.) 352; 2 *Hill* (N. Y.) 331; 6 *Wend.* (N. Y.) 486, 487; 14 *Wend.* (N. Y.) 209, 211; 23 *Wend.* (N. Y.) 537, 538; 2 *Watts* (Pa.) 9, 11; 8 *Barn. & C.* 29, 34; 1 *Chit. Gen. Pr.* 53; 1 *Crompt. & M.* 450, 461; 9 *Dowl. & Ry.* 772, 775; 3 *Stark.* 178, 181; 3 *Tyrw.* 339, 347.

DIRIMENT IMPEDIMENTS.—Absolute bars to marriage, which would make it null *ab initio*.

DISABLE.—

§ 1. In its ordinary sense, to disable is to cause a disability (*q. v.*)

§ 2. In the old language of pleading, to disable is to take advantage of one's own or another's disability. Thus, it is "an express maxim of the common law that the party shall not disable himself;" but "this disability to disable himself . . . is personal." 4 *Co.* 123 b.

DISABLED TO PURCHASE, INHERIT OR TAKE, (in a statute). 1 *Str.* 318, 353, 357.

DISABILITY.—The absence of legal ability to do certain acts or enjoy certain benefits; such as the disability to sue, to take lands by descent, to enter into contracts, to alien property, &c.

§ 2. **General, and special.**—Disability is called "general," when it disables the person from doing all acts of a given kind, or "special," when it disables him from doing a specific act. Examples of general disability occur in the case of outlaws and convicts, who cannot bring any action or suit in their own right, and lunatics and infants, who cannot alien property or enter into contracts except for necessities. The disabilities of married women have recently been modified, and in some jurisdictions entirely removed, by the Married Woman's Acts. A special disability occurs where a person who has entered into a contract becomes incapable of performing it. (*Hochster v. De La Tour*, 2 *El. & B.* 678.) Such a disability generally arises by act of the party; as where a per-

son who has contracted to marry a woman marries another, and thereby disables himself from performing his promise. *Id.*; *Litt.* § 355.

§ 3. As a rule, "disability" means a general disability, especially a disability to sue. (*Co. Litt.* 128 a.) Disabilities of this kind are of importance with reference to the Statutes of Limitation and relating to adverse possession, (*q. v.*) which allow persons under certain disabilities an extended time within which to enforce their rights. The *Stats.* 3 and 4 *Will.* IV. c. 27, § 16, includes "absence beyond seas" (*q. v.*) in the list of disabilities, although it is, strictly speaking, only a disadvantage or "impediment," as the *Stats.* 21 *Jac.* I. c. 16, § 4, rightly calls it.

§ 4. **Personal, and absolute.**—Disabilities are either personal or absolute. A personal disability is one which is confined to a certain person, such as that of an infant, married woman, &c. An absolute or perpetual disability is that which not only attaches to the person disabled, but also to his descendants or successors. Thus, formerly where a person was attainted of treason or felony, that was an absolute and perpetual disability, by corruption of blood, for any of his posterity to claim any inheritance in fee-simple, either as heir to him or to any ancestor above him. (*Lord De La Warre's Case*, 11 *Co.* 1; hence called "disability in the blood." *Collingwood v. Pace*, 1 *Vent.* 413.) But this rule as to attainder has been abolished except in the case of lineal descent from persons outlawed, and was never adopted in America. *Stats.* 3 and 4 *Will.* IV. c. 106, § 10; 33 and 34 *Vict.* c. 23; *Shelf. R. P. Stat.* 456.

§ 5. **Civil, and canonical.**—Disability is also used in the special sense of disability to enter into the contract of marriage. This may be either canonical (such as the natural inability at the time of marriage to procreate children) or civil. A canonical disability makes the marriage voidable, while a civil disability (except that for want of age) makes it void. Examples of civil disabilities are: (1) A prior and existing marriage of one of the parties; (2) want of reason; (3) consanguinity or affinity within the prohibited degrees; (4) want

of age, viz., the fact that the male is under fourteen or the female under twelve. 2 Steph. Com. 240.

DISABILITY, (defined). 3 Sawy. (U. S.) 206, 213.

—— (of officer). 32 Barb. (N. Y.) 473, 480.

DISABLING STATUTES.—Certain English statutes relating to the alienation of church lands by ecclesiastical corporations aggregate and (in a lesser measure) by ecclesiastical corporations sole. They are 1 Eliz. c. 19; 13 Eliz. c. 10; 14 Eliz. c. 11, and 18 Eliz. c. 11; amended by 6 and 7 Will. IV. c. 20, and a considerable number of statutes passed in the present reign. Leases are by these statutes (speaking roughly) limited to the term of twenty-one years or three lives; but, with the sanction of the Church Estates Commissioners, building and mining leases of a much longer duration may be granted.—*Brown*. See **ENABLING STATUTES**; **STATUTE**.

DISADVOCARE.—To deny a thing.

DISAFFIRMANCE.—The refusal by one who has entered into a voidable contract, *e. g.* an infant, to carry out its provisions, or abide by it. It may either be “express” (in words) or “implied” from acts expressing the intention of the party to disregard the obligations of the contract.

DISAFFOREST.—To throw open; to reduce from the privileges of a forest to the state of common ground. 2 Bl. Com. 416.

DISAGREEMENT.—The refusal by a grantee, lessee, &c., to accept an estate, lease, &c., made to him; the annulling of a thing that had essence before. No estate can be vested in a person against his will, consequently no one can become a grantee, &c., without his *agreement*: the law implies such an agreement until the contrary is shown, but his disagreement renders the grant, &c., inoperative. If an infant purchase an estate, he may, on coming to full age, disagree thereto; and if he do not agree thereto, his heirs, after his death, may waive it. If a person of unsound mind purchase an estate, he cannot afterwards disagree thereto himself; but if he does not recover, or after recovery dies without agreement, his heir may disagree to it. If a *feme covert* purchase an estate, her husband may disagree thereto; and if he neither agrees nor disagrees, the purchase is good during the coverture, but after his death, notwithstanding his agreement, the wife may disagree thereto, and so after her death may her heirs, if she does not herself agree thereto. Persons who purchase an estate under duress may disagree thereto when the duress ceases. (See *Co. Litt.* 2b, 3a, 380b; 3 *Prest. Abst.* 104; 2 *Bl. Com.* 292; *Vin. Abr. Disagreement*.)—*Wharton*.

DISALT.—To disable a person.

DISAPPROPRIATION.—This is where the appropriation of a benefice is severed, either by the patron presenting a clerk, or by the corporation which has the appropriation being dissolved. 1 *Bl. Com.* 385. See **APPROPRIATION**, § 7; **SINECURE**.

DISBAR.—In England, when a barrister is expelled from his inn for misconduct, he is said to be disbarred. In America the word is used in the same sense, to express the deprivation by the court of the right of an attorney to practice therein.

DISBOSCATIO.—A turning wooded ground into arable or pasture.—*Cowell*.

DISBURSEMENTS.—The expenditures in an action or proceeding other than the taxable costs.

DISBURSEMENTS, (in a statute). 41 *Ala.* 267, 272.

—— (what are taxable against adverse party). 5 *Paige* (N. Y.) 551.

—— (what should be allowed as). 9 *Abb.* (N. Y.) *Pr.* 111.

—— (what are not). 2 *Chit. Gen. Pr.* 30.

DISBURSING OFFICERS, (surveyors of public lands are). 5 *Pet.* (U. S.) 373.

DISCARCARE.—To unlade a ship or vessel.—*Cowell*.

DISCEPTIO (or **DISCEPTATIO**) **CAUSÆ.**—In the Roman law, the argument of a cause by the counsel on both sides.—*Culv. Lex*.

DISCHARGE.—

§ 1. To discharge a right or obligation is to deprive it of its binding force, and to discharge a person is to release him from an obligation; thus, payment discharges a debt, and in the case of a guaranty, an alteration of the contract, without the consent of the surety, will in general discharge him. *Chit. Cont.* 492 *et seq.*; 2 *White & T. Lead. Cas.* 892.

§ 2. Discharge is a generic term; its principal species are rescission, release, accord and satisfaction, performance, judgment, composition, bankruptcy, merger (*q. v.*) *Leake Cont.* 413.

§ 3. Discharge by operation of law is where the discharge takes place whether it was intended by the parties or not; thus, if a creditor appoints his debtor his executor, the debt is discharged by operation of law, because the executor cannot have an action against himself. *Co. Litt.* 264b, n. (1); *Wms. Ex.* 1216; *Chit. Cont.* 714.

§ 4. In the law of bankruptcy, a discharge is the proceeding by which a person who has been adjudicated a bankrupt, or whose affairs are being liquidated, is freed from all his debts provable in the bankruptcy or liquidation, with a few exceptions, and is also enabled to acquire property without its vesting in the trustee or assignee. As to the discharge of a bankrupt, *see* **BANKRUPT**, § 1, *note*.

§ 5. To discharge a proceeding (such as the order of a court or judge, or the certificate of a clerk, process of attachment or execution, or the like,) is to set it aside, on an application made for that purpose, either to the court in which the proceeding is pending, or to an appellate court. To discharge a rule or order *nisi* is where the court refuses to make it absolute. *See* **ABSOLUTE**; **NISI**.

§ 6. Discharge of jury.—At the trial of an action it sometimes becomes necessary to discharge the jury, either on account of the sudden illness of a jurymen (*Rea v. Edwards*, 3 Campb. 207), or because they cannot agree; in which case, when there is no hope of their resolving on a verdict, it is now the practice to discharge them. *Sm. Act.* 139.

§ 7. A prisoner or defendant is discharged from arrest or imprisonment when he is set at liberty.

As to the discharge of encumbrances by payment of the amount secured into court, *see* **PAYMENT INTO COURT**. As to the discharge of quit-rents, &c., *see* **RENT**.

DISCHARGE, (defined). 1 Day (Conn.) 275, 277.

— (of one of two joint partners). 6 Halst. (N. J.) 287.

— (of insolvent in another State). 1 Halst. (N. J.) 149; 5 *Id.* 208; Penn. (N. J.) 807; South. (N. J.) 196, 466; 2 Johns. (N. Y.) 235; 7 Johns. (N. Y.) Ch. 297.

— (in a statute). 2 Allen (Mass.) 161, 162.

— (under bankrupt act). 3 Johns. (N. Y.) Ch. 435.

— (under insolvent debtor act). 4 Johns. (N. Y.) 191; 11 *Id.* 224; 14 *Id.* 177; 1 Johns. (N. Y.) Cas. 133; 1 Cow. (N. Y.) 42, 165.

DISCHARGE HER CARGO, (in policy of insurance). 5 Esp. 96, 98.

DISCHARGE IN BANKRUPTCY.—*See* **DISCHARGE**, § 4.

DISCHARGE OF JURY.—*See* **DISCHARGE**, § 6.

DISCHARGE OF SAID DEBT, (in a bond). 1 Com. 761, 781.

DISCHARGED, (defined). 9 Cush. (Mass.) 68, 70; 1 Binn. (Pa.) 1, 10.

— (in act relative to indictments). 3 Zab. (N. J.) 143, 148; 14 Vr. (N. J.) 67.

— (not synonymous with "acquitted"). 2 Yeates (Pa.) 475 n.; 2 T. R. 225, 231.

DISCHARGED ACCORDING TO LAW, (in a statute). 2 Serg. & R. (Pa.) 290, 291.

DISCHARGED OUT OF CUSTODY BY DUE COURSE OF LAW, (in a plea). 2 Johns. (N. Y.) 433.

DISCHARGES, SUFFICIENT, (in power of attorney). 5 Barn. & Ald. 204.

DISCLAIM—DISCLAIMER —

§ 1. To disclaim a right, interest or office is to expressly renounce all claim to it or refuse to accept it. Thus, where property is conveyed to a person upon certain trusts, he may disclaim the trust unless he has accepted the office or has acted as trustee. The act of disclaiming is called a "disclaimer," and is generally evidenced by a deed or writing. (*Elphins. Conv.* 401; *Wats. Comp. Eq.* 877.) As to disclaimer by a lord or tenant of land (disclaimer in the seignory, disclaimer in the tenancy, and disclaimer in the blood), *see* **Co. Litt.** 102a. *See* **RENUNCIATION**.

§ 2. **Patent**.—Where a person has obtained a patent for an invention of which the title is inconsistent with the specification, or of which a part is neither new nor useful, the patent is in strictness void; but a patentee is in such a case empowered, with the leave of the court, to enter a disclaimer of any part of either the title or the specification, and the disclaimer is then deemed to be part of the letters-patent or specification, so as to render them valid for the future. Johns. Pat. 151. *See* **TITLE**.

§ 3. **Trustee in bankruptcy**.—In England where any property of a bankrupt consists of land burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of property which is not salable by reason of its binding the possessor to the performance of any onerous act, the trustee in the bankruptcy may sign a disclaimer of the property, which has the effect of determining the contract, surrendering the lease, forfeiting the shares, or determining the estate and interest of the bankrupt, according to the nature of the property (*Bankr. Act*, 1869, § 23). As to the construction of this section, *see* **Polson Bankr.** 377 *et seq.*; *In re Mercer and Moore*, 14 Ch. D. 287, but a disclaimer cannot prejudice the rights of third persons, such as a mortgagee of the bankrupt. *Ex parte Buxton*, 15 Ch. D. 289. *See* *Smalley v. Hardinge*, 6 Q. B. D. 371.

§ 4. **Disclaimer in suit in equity.**—Under the practice of Courts of Chancery, if a bill claiming relief is filed against a person who had no interest in the subject-matter of the suit, his proper course is to file a disclaimer, alleging that he has not any right or title, and that he does not and never did claim any title to the subject-matter of the suit. In such a case the plaintiff generally has his bill dismissed as against that defendant. Hunt. Eq. 43; Mitf. Pl. 283; Dan. Ch. Pr. 458.

§ 5. **Of tenancy.**—The denial by the party in possession of land of the existence of the relation of landlord and tenant between himself and the person who claims to be the owner of the land. See Vivian v. Moat, 16 Ch. D. 730.

DISCLAIM, (defined). 13 Conn. 83, 85; 2 Bl. Com. 275, 276; 1 Chit. Gen. Pr. 363.

DISCLAIMER, (what is). 6 Cow. (N. Y.) 616, 620; 3 Barn. & Ald. 31.

—— (what is not). 6 Barn. & C. 112, 116.

—— (effect of). 13 Mass. 440.

DISCLAMATION.—In the Scotch law, equivalent to disclaimer of tenancy. See DISCLAIMER, § 5.

DISCLOSURE.—In England, every solicitor whose name is on a writ, shall, on demand in writing by any defendant served with the writ, declare whether the writ was issued by his authority or with his privity, and if he declare it was not so issued, all proceedings on it shall be stayed, unless by leave. (Judicature Act, 1875, Ord. VII. r. 1. A similar rule prevails in some of the States.) When a writ is sued out by partners in the name of their firm, they or their solicitor may be similarly compelled to disclose the names and residences of the various partners. *Id.* r. 2.

DISCLOSURE, (in a statute). Wilberf. Stat. L. 129.

DISCONTINUANCE.—

§ 1. **Action.**—In procedure discontinuance is where the plaintiff in an action voluntarily puts an end to it, either by giving notice in writing to the defendant before any step has been taken in the action subsequent to the answer, or at any other time by order of the court or a judge. The effect of discontinuance is that the plaintiff has to pay the defendant's costs, but may commence another action for the same cause. (See WITHDRAWAL.) If the defendant has put in a counter-claim, the discontinuance puts an end to it as well as to the original action.

§ 2. **Land.**—Formerly, in the law of real property, discontinuance was where a man wrongfully aliened certain lands or tenements and died, whereby the person entitled to them was deprived of his right of entry, and was compelled to bring an action to recover them. The term was specially applied to alienations by husbands seized *jure uxoris*, by ecclesiastics seized *jure ecclesiae*, and by tenants in tail; thus, if a tenant in tail aliened the land and died leaving issue, the issue could not enter on the land, but was compelled to bring an action. (Litt. § 592 *et seq.*; Co. Litt. 325 a, and Butler's note. See, also, §§ 470, 614, where Littleton uses discontinuance for devesting, as applied to a reversion.) The principal actions appropriate to discontinuances were *formedon, cui in vita, cui ante divortium*. The effect of discontinuance is taken away by Stats. 3 and 4 Will. IV. c. 27, § 39. See RECONTINUANCE.

§ 3. **Pleading.**—The interruption of the proceedings which occurs where a defendant does not answer the whole of the plaintiff's declaration, and the plaintiff omits to take judgment for the part unanswered. Steph. Pl. 216, 217.

DISCONTINUANCE, (defined). 52 Miss. 457, 467; 2 Bing. 258; 2 Bl. Com. 275; Cro. Jac. 236.

—— (of a suit). 15 Mass. 178; Penn. (N. J.) 906; 1 Cow. (N. Y.) 245; 4 Johns. (N. Y.) 117; 5 *Id.* 353; 9 *Id.* 140; 12 *Id.* 217; 13 *Id.* 469; 15 *Id.* 504; 18 *Id.* 22; 1 Wend. (N. Y.) 314, 315; 2 *Id.* 505, 506; 15 *Id.* 99, 101; 4 Wheel. Am. C. L. 455.

DISCONTINUANCE OF POSSESSION, (in a statute). 5 Ex. D. 264.

Discontinuare nihil aliud significat quam intermittere, desuescere, interrumpere (Co. Litt. 325): To discontinue signifies nothing else than to intermit, to disuse, to interrupt.

DISCONTINUATION, (synonymous with "dismissal"). 48 Mo. 235, 236.

DISCONTINUE, (in a statute of United States). 8 Wall. (U. S.) 38, 43.

DISCONTINUED, (in an award). 9 East 497.

DISCONTINUING, (a highway). 3 Mass. 406, 407; 8 *Id.* 457.

DISCONTINUOUS SERVITUDE.

—An easement of servitude depending upon the performance of repeated acts, instead of one continuous act. Such as a right of way, of drawing water, &c.

DISCOUNT.—Abatement; a sum of money deducted from a debt in consideration of its payment before the stipulated time. The creditor, by receiving his money before it is due, is able to put it out at interest during the interval, and he should therefore only receive such a sum as if

put out at interest would produce the amount of the debt when it would become due. It is usually said to be of two kinds, viz.: discount of bills, and discount of goods; but they are essentially the same. The usual method of allowing discount, by deducting from the amount of the debt the interest which it would produce at the given rate during the given time, is inaccurate. The true discount for any given sum, for any given time, is such a sum as would, if put out at interest in that time, amount to the interest of the sum to be discounted; the proper discount, therefore, to be received for the immediate advance of £100 at five per cent., due twelve months hence, is not £5, but £4 15s. 2½d., for this sum will, at the end of the year, amount to £5, which is what the £100 would have produced.—*Wharton*.

DISCOUNT, (defined). 13 Bankr. Reg. 263, 269; 14 Ala. 668, 677; 13 Conn. 249, 259; 20 Kan. 440, 441; 18 Barb. (N. Y.) 456, 462; 9 How. (N. Y.) Pr. 530; 12 N. Y. Leg. Obs. 303; 48 Mo. 189, 191; 6 Ohio St. 527, 535; 15 *Id.* 68, 87; 35 Pa. St. 223, 226 n.

—— (distinguished from "set-off"). 1 Metc. (Ky.) 597, 599.

—— (of note, as synonymous with "loan of money"). 2 Harr. (N. J.) 207.

DISCOUNT AND PURCHASE, (of promissory note). 23 Minn. 193.

DISCOUNT, BANK OF, (defined). 23 Minn. 198, 205.

DISCOUNT BROKER.—A bill broker; one who discounts bills of exchange and promissory notes, and advances money on securities.

DISCOUNTED, (in a statute). 17 N. Y. 507, 515.

DISCOUNTING, (what is). 5 Man. & G. 590, 595.

—— (notes). 1 Doug. (Mich.) 282; 2 Cow. (N. Y.) 619, 675, 699; 1 Hall (N. Y.) 556; 1 Hilt. (N. Y.) 98; 15 Johns. (N. Y.) 168; 19 *Id.* 332; 17 N. Y. 507, 515.

—— (distinguished from "purchasing"). 23 Minn. 193, 206.

DISCOVERT.—Not covert; unmarried. Applied to an unmarried woman or a widow.

DISCOVERY.—

§ 1. Discovery is where one party to an action or suit obtains from another party information on oath. It is of two kinds—(1) discovery by interrogatories of facts relevant to the issue in the action, and

within the knowledge of the party interrogated; and (2) discovery of documents relating to the matters in question in the action, and in the possession of the party. The object of the former proceeding is partly to obtain information on subjects of which the interrogating party is ignorant or misinformed, and partly to obtain admissions so as to save the necessity of proving certain facts. For this purpose, the interrogating party delivers to the opposite party interrogatories (*q. v.*), to which the latter is bound to file his answer on oath. See ANSWER, § 2.

§ 2. Sometimes in England an action is brought against a person for the sole purpose of obtaining information to enable the plaintiff to take proceedings against some other person; such an action is called an "action for discovery," as opposed to an action in which relief is sought against the defendant. *Orr v. Diaper*, 4 Ch. D. 92. See BILL OF DISCOVERY.

DISCREDIT.—

§ 1. To discredit a witness is to throw doubts on the correctness of a statement made by him in giving evidence, either—(1) by giving evidence of his general bad character for veracity, or by cross-examining him on the subject (see CHARACTER, § 2); (2) by showing that he has on former occasions made statements inconsistent with the evidence he has given relevant to the cause; (3) by proving misconduct connected with the proceedings, *e. g.* his having been bribed by one of the parties.

§ 2. A party cross-examining an opponent's witness may use any of these modes. A party examining his own witness cannot as a rule discredit him, except collaterally, *i. e.* by adducing evidence to show that the evidence he gave was untrue in fact. But if a witness prove adverse, the party calling him may use the second mode of discrediting above mentioned. *Best Ev.* 803. See WITNESS.

DISCREPANCY.—A difference between two things which ought to be identical, between one writing and another; a variance (*q. v.*)

Discretio est scire per legem quid sit justum (10 Co. 140): Discretion is to know through law what is just.

DISCRETION—DISCRETIONARY.—Discretion is a man's own judgment as to what is best in a given case,

as opposed to a rule governing all cases of a certain kind. Thus, a trustee often has a discretion given him as to the management or application of the trust property. So, a judge, or court, often has a discretion in making orders or imposing conditions on litigants, *e. g.* as to payment of costs, relaxing rules of practice, &c. Discretion, however, is "to discern by the right line of law, and not by the crooked cord of private opinion, which the vulgar call discretion" (Co. Litt. 227 b); and, therefore, if a judge proceeds on a wrong principle in a matter within his discretion, his order may be set aside by a court of appeal, (*see* *Watson v. Rodwell*, 3 Ch. D. 380,) and if a trustee acts fraudulently or negligently, the possession of a discretionary power will not protect him. Lew. Trusts 511. *See, also*, DELEGATION; POWER; TRUST.

DISCRETION, (defined). 18 Wend. (N. Y.) 79, 99; 4 Burr. 2527, 2539; Hob. 158, 159.

—— (what constitutes). 3 Madd. 491, 493.

—— (in a will). 19 Ves. 386, 392.

—— (of court, defined). Coxe (N. J.) 399; 34 Barb. (N. Y.) 291, 293.

—— (of commissioners appointed under a statute). 1 Johns. (N. Y.) Ch. 18.

—— (of subordinate officers). 19 Johns. (N. Y.) 259.

—— (of trustees under a will). 5 Paige (N. Y.) 485.

DISCUSSION.—By the Roman law, sureties were not primarily liable to pay the debt for which they became bound as sureties; but were liable only after the creditor had sought payment from the principal debtor, and he had failed to pay. This was called the benefit or right of discussion. Under those systems of jurisprudence which adopt the Roman law, and under the present law of France (and Louisiana), the rule is similar; and the obligation contracted by the surety with the creditor is, that the latter shall not proceed against him until he has first discussed the principal debtor, if he is solvent. This right the surety enjoys, as the *beneficium ordinis vel excussionis*. And, again, if other persons are joined with him in the obligation as sureties, he is not in the first instance to be proceeded against for the whole debt, but only for his share of it, if his co-sureties and co-obligees are solvent. This is commonly known as the benefit of division, or *beneficium divisionis*.—*Wharton*.

DISENFRANCHISE.—*See* DISFRANCHISEMENT.

DISENTAILING DEED.—An assurance by which a tenant in tail bars his estate tail so as to convert it into an estate in fee, either absolute or base. By the Fines and Recoveries Act, by which this mode of barring entails was intro-

duced, every tenant in tail may dispose of the land for an estate in fee-simple absolute, so as to defeat the rights of all persons claiming under and after him; provided (1) that the disposition, in the case of freehold land, is by deed enrolled in the High Court of Justice, or, if the land is copyhold, by surrender enrolled on the court rolls of the manor, unless the estate tail is equitable, when it may be barred either by surrender or by deed enrolled; and (2) that if there is a protector under the instrument creating the entail, no disposition made without his consent by the tenant in tail bars the persons entitled in remainder or reversion expectant on the determination of the estate tail. An ordinary disentailing deed consists of a conveyance of the land by the tenant in tail to a nominee to such uses as the tenant in tail shall appoint, and in default of appointment to the use of him and his heirs. Stat. 3 and 4 Will. IV. c. 74, §§ 15, 40 *et seq.*; Shelf. R. P. Stat. 320, 343. *See* ENROLL; FEE; PROTECTOR; SURRENDER.

DISFIGURING, (what does not constitute the offence of). Cheves (S. C.) 157.

DISFOREST.—*See* DISAFFOREST.

DISFRANCHISEMENT.—The act of depriving of a franchise, immunity or privilege.

DISGAVEL.—To convert gavelkind land into ordinary freehold land. Several private acts have been passed disgaveling land in Kent.

DISGRADING.—The act of degrading, or depriving of an order or dignity, temporal or spiritual.—*Termes de la Ley*.

DISGUISE, (defined). 46 Ala. 118, 142.

DISHERISON.—The act of debarring from inheritance.

DISHERITOR.—One who puts another out of his inheritance.

DISHONOR.—*See* BILL OF EXCHANGE § 5; HONOR.

DISINCARCERATE.—To set at liberty to free from prison.

DISINHERISON.—*See* DISHERISON.

DISINTERESTED, (who is). 50 Me. 334, 335.

—— (in Maine Rev. Stat. 1857, ch. 74, § 1). 47 Me. 474, 476.

—— (in fire insurance policy). 48 Ill. 31

DISINTERESTED AND CREDIBLE WITNESS. (equivalent to "competent witness"). 48 Me. 193, 195.

DISINTERESTED WITNESS.—A witness who has no interest in the matter in controversy between the party calling him and the adverse party.

DISJUNCTIVE ALLEGATIONS.

—Allegations in a pleading, indictment or information, which charge a party in the alternative, by the use of the disjunctive conjunction—as, that he murdered or caused to be murdered, sold or caused to be sold, &c. Such allegations, in indictments, are generally held bad for uncertainty, but a less strict rule prevails in construing civil pleadings.

DISME.—A tenth; the tenth part; tithes due to the clergy; the tenth of all spiritual livings. 2 and 3 Edw. III. c. 35. See **DIME**.

DISMISSAL, (of appeal). 13 Vr. (N. J.) 391.

DISMISSAL OF ACTION.—In some jurisdictions, if the plaintiff in an action does not prosecute within the time during which he is bound to do so, or if he does not set down the action for trial within the proper time, the defendant may apply to the court, or a judge, to dismiss the action for want of prosecution, thereby putting an end to the action. An action may also be dismissed upon the trial, where plaintiff fails to make out his case before resting.

DISMISSAL OF ACTION, (is a final decision of the action). 21 Cal. 151, 164.

DISMISSAL OF BILL.—A bill in equity may be dismissed by the court at the hearing, or by the plaintiff before decree, when unable to prosecute his suit. After decree the bill can only be dismissed upon rehearing or appeal; and by the defendant either for want of prosecution, or upon an abatement by the death of the plaintiff or otherwise. Dan. Ch. Pr. (4 edit.) 731–742. See **NON-SUIT**.

DISMISSAL OF COMPLAINT.

See **DISMISSAL OF ACTION**.

DISMISSED, (defined). 56 N. H. 414, 417.

DISMORTGAGE.—To redeem from mortgage.

DISORDERLY CONDUCT, (of member of common council). 1 Dutch. (N. J.) 536.

DISORDERLY HOUSE.—Any common (*i. e.* public) bawdy house, common gaming or betting house, or disorderly place of entertainment. It is a common nuisance, and therefore a misdemeanor, to keep a disorderly house. Steph. Cr. Dig. 109.

DISORDERLY HOUSE, (in a statute). 33 Conn. 259.

DISORDERLY PERSONS.

A class of persons subject to police regulation, described in the local statutes which provide for their punishment.

DISPARAGE — DISPARAGEMENT.—LATIN: *dis, apart*; and old FRENCH: *parage*, lineage, rank. Skeat Etym. Dict. s. v.

§ 1. As to disparaging statements, see **DEFAMATION**.

§ 2. Under the old law, if a tenant of land held by knight's service died leaving an infant heir, the lord of whom the land was held was entitled to the marriage of the heir, *i. e.* to bestow him or her in marriage. (See **MARRIAGE**.) It was necessary, however, that the proposed marriage should be without disparagement, *i. e.* suitable to the heir; otherwise the heir was said to be disparaged.

§ 3. Disparagements were of several kinds, of which the principal were *propter vitium animi*, as where the proposed wife or husband was an idiot, &c.; *propter vitium sanguinis*, as in the case of villeins, "men of trade," &c., and *propter vitium corporis*, by reason of some bodily defect. Litt. § 109; Co. Litt. 80a.

DISPARAGEMENT, MARRIAGE IN, (what is not). 1 Ired. (N. C.) Eq. 232, 240.

Disparata non debent jungi (Jenk. Cent. 24): Things unlike should not be joined.

DISPARK.—To throw open a park.

DISPARKING, (defined). Hob. 45.

DISPATCH, or DESPATCH.

(1) A message, letter, or order sent with speed on affairs of State; (2) a telegraphic message.

DISPAUPER.—In English law, a person who has been admitted to *sue in forma pauperis* (*q. v.*) is said to be dispaupered when that privilege is withdrawn, as where it appears that he has means. Dan. Ch. Pr. 43.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem prævidendi de omnibus particularibus (10 Co. 88): A dispensation is the provident relaxation of a *malum prohibitum* weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars.

Dispensatio est vulnus, quod vulnerat jus commune (Dav. 69): A dispensation is a wound, which wounds common law.

DISPENSATION.—In English law, an exemption from some laws; a permission to do something forbidden; an allowance to omit something commanded; the canonistic name for

a license.—*Wharton*. This power of dispensation is unknown in American law.

DISPERSONARE.—To scandalize or disparage.—*Blount*.

DISPLACE, (defined). 103 Mass. 68, 69.

DISPONE.—In Scotch law, to transfer or alienate.

DISPONE, (in conveyance of heritage). L. R. 2 Sc. App. 397.

DISPOSE, (in a devise). 3 Atk. 282, 287.

— (in a statute, includes a power to sell). 2 Mass. 476, 477.

DISPOSE OF, (in United States constitution). 14 Pet. (U. S.) 529, 538.

— (in act of incorporation). 1 Watts (Pa.) 385, 386.

DISPOSED OF, (defined). 2 Root (Conn.) 447, 488.

DISPOSED OF PROPERTY, (under a covenant to renew a lease). 42 N. Y. 79.

DISPOSING MIND AND MEMORY, (defined). South. (N. J.) 454, 458.

DISPOSING OF WITHOUT, (in a devise). 15 Johns. (N. Y.) 169.

DISPOSITION.—In the Scotch law, a deed of alienation by which a right to property is conveyed.—*Bell Dict.*

DISPOSITION, FINAL, (meaning of). 13 Wall. (U. S.) 664.

DISPOSITION OF THE OWNER OF TWO TENEMENTS.—See EASEMENT, § 10.

DISPOSSESSION.—Ouster; the amotion or privation of possession of land. See SUMMARY PROCEEDINGS.

DISPROPORTIONATE AND UNREASONABLE, (what is not). 103 Mass. 267, 272.

DISPUNISHABLE.—Without penal restraint.

DISPUTABLE PRESUMPTION.—A presumption of law, which may be rebutted or disproved.—*Best Pres.* § 25.

DISPUTATIO FORI.—In the civil law, discussion or argument before a court.

DISPUTE BETWEEN EMPLOYER AND WORKMAN, (in employer and workman's act). 1 Ex. D. 179.

DIRATIONARE, or DIRATIONARE.—To justify; to clear one's self of a fault; to traverse an indictment; to disprove.—*Encyc. Lond.*

DISSECTION.—The anatomical examination of a dead body.

DISSEISE.—To dispossess, to deprive.

DISSEISEE.—A person turned out of possession.

DISSEISIN.—Disseisin "is the wrongful putting out of him that is actually seised of a freehold" (Co. Litt. 227 a); in other words, the act of wrongfully depriving a person of the seisin of land, (*Id.* 153 b; Butler's note to 266 b,) rents, (Litt. § 233 *et seq.*,*) or other hereditaments, as where a man not having a right of entry on certain lands or tenements enters into them and ousts him who has the freehold. (Litt. § 279.) In the case of land, the disseised person has both a right of entry and a right of action (*q. v.* and DESCENT CAST). In the case of incorporeal hereditaments, as the disseisin is only so by election (*infra* § 3), the disseised person may either have an action for the disseisin, or he may avail himself of any other remedy which the law gives him (*e. g.* in the case of rent, by distraining). *Id.* § 588.

§ 2. Equitable disseisin is where a person is wrongfully deprived of the equitable seisin of land, *e. g.* of the rents and profits. *Cholmondeley v. Clinton*, 2 Meriv. 171; 2 Jac. & W. 166.

§ 3. By election.—Disseisin by election is where a person alleges or admits himself to be disseised when he has not really been so. In former days this was done, in England, by persons in order to avail themselves of the writ of assize, which was a convenient remedy available only by those who had been disseised of land. (Butler's note (1) to Co. Litt. 239 a.) Since the abolition of forms of action, the distinction between disseisin and other modes of wrongful dispossession of land is no longer of practical importance. Disseisin of incorporeal hereditaments cannot be an actual dispossession, being in general nothing more than a disturbance of the owner in the means of coming at or enjoying them. Disseisin of an incorporeal hereditament therefore only takes place at the election of the party injured, for the sake of more easily trying the right. (3 Bl. Com. 169.) As the remedy for a disseisin has now no advantages over other kinds of actions, disseisin by election is practically obsolete. See ABATEMENT; ACTION; DEFORCEMENT; DISTURBANCE; INTRUSION; POSSESSION; SEISIN.

DISSEISIN, (defined). 5 Conn. 497, 518; 14 Pick. (Mass.) 224, 228; 45 Mo. 35, 38; 8 Barb. (N. Y.) 189, 194; 9 Cow. (N. Y.) 530, 552; 6 Johns. (N. Y.) 197.

* "There be three causes of disseisin of rent service, that is to say, rescous, replevin, and enclosure." Litt. § 237 See those titles.

DISSEISIN, (what is). 4 Mas. (U. S.) 326, 329; 5 Pet. (U. S.) 319, 354, 402, 434; 6 Metc. (Mass.) 239, 337.

— (what is not). 24 Me. 29, 34; 29 Id. 128, 132; 3 Metc. (Mass.) 125, 129.

— (distinguished from "dispossession"). 6 Metc. (Mass.) 439, 444.

DISSEISIN BY ELECTION, (explained). 2 Wend. (N. Y.) 166, 201.

DISSEISIN IN FACT, (defined). 2 Wend. (N. Y.) 166, 201.

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat (Co. Litt. 331): He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.

DISSEISOR.—A person who unlawfully puts another out of his land.

DISSENT.—A disagreement, either expressed or implied, to an act.

DISSENTERS.—Protestant seceders from the established church of England. They are of many denominations, principally presbyterians, independents, methodists and baptists; but as to church government, the baptists are independents.

DISSIGNARE.—To break open a seal.

Dissimilium dissimilis est ratio (Co. Litt. 191): Of dissimilars the rule is dissimilar.

DISSOLUTION.—The act of putting an end to a legal relation.

§ 2. **Partnership**.—In the case of a partnership, dissolution takes place either by the operation of law (*e. g.* in ordinary cases, on the death or bankruptcy of one of the partners), by agreement between the partners, by effluxion of time, or by the order of a court in proceedings taken for the purpose. A state of things which entitles a partner to obtain an order of dissolution is called a "ground of dissolution;" such is the insanity or misconduct of one of the partners, the hopeless state of the business, or any other state of things which makes it impossible to continue the partnership. Lind. Part. 234.

§ 3. **Corporation**.—In the case of a corporation, dissolution takes place when its affairs have been completely wound up and certain formalities have been gone through, (Lind. Part. 1489; *In re Pinto Silver Mining Co.*, 8 Ch. D. 273; *In re London and Cal. M. I. Co.*, 11 Ch. D. 140,) or where it has ceased to carry on its business or operations for a certain time.

§ 4. In England, a friendly, industrial or provident society is dissolved either by an order of the county court, or by an instrument of dissolution setting forth the liabilities and assets of the society, signed by a certain majority of the members and registered. (Indus. and Prov. Soc. Act, 1876, § 17.) A friendly society may also be dissolved by the award of the registrar. (Friendly Soc. Act, 1875, § 25.) Other corporations may be dissolved in various ways, *e. g.* by surrender or forfeiture of a charter, &c. 3 Steph. Com. 30.

§ 5. **Marriage**.—The English High Court, on proceedings taken in the Probate, Divorce and Admiralty Division (*q. v.*), has power to decree the dissolution of a marriage on the petition of the husband alleging adultery by the wife, or on the petition of the wife alleging that the husband has committed adultery and cruelty, or adultery and desertion, or certain other offences. 20 and 21 Vict. c. 85, § 27; Browne Div. 24; Macq. Husb. & W. 203 *et seq.* See ADULTERY; CRUELTY; DESERTION; DIVORCE; JUDICIAL SEPARATION.

§ 6. **Effect of decree**.—A decree of a foreign court dissolving an English marriage (*i. e.* a marriage celebrated in England) will be recognized by the English courts: (1) if it was pronounced for grounds on which the marriage was liable to be dissolved in England (Solley's Case, Russ. & Ry. 237), or (2) if the husband was at the time of the marriage domiciled in the foreign country. *Harvey v. Farnie*, 5 P. D. 153. See DOMICILE; JUDGMENT.

DISSOLUTION, ABSOLUTE, (of a corporation). 2 Harr. (Del.) 8, 12.

DISSOLUTION OF PARLIAMENT.—The crown may dissolve parliament either in person or by proclamation; the dissolution is usually by proclamation, after a prorogation. No parliament may last for a longer period than seven years. (Septennial Act, 1 Geo. I. c. 38.) Under the 6 Anne c. 37, upon a demise of the crown parliament became *ipso facto* dissolved six months afterwards, but under the Reform Act, 1867, its continuance is now nowise affected by such demise. (May Parl. Pr. (6 edit.) 48.)—Brown.

DISSOLVE.—To put an end to, cancel, abrogate, annul; applied to an injunction in chancery, as discharge is to a rule nisi in common law. *Dissolvo* is the Latin for both verbs. If an injunction has been obtained by a misrepresentation of facts it will be dissolved, although, on the merits, it is called for.

DISSOLVED, (what is not a dissolution of a corporation). 3 Burr. 1866, 1870.

DISSOLVING A CORPORATION, (meaning of). 1 Holmes (U. S.) 103, 109.

DISSUADE.—To influence a person not to do a certain act. The term is used

in the criminal law with reference to inducing a witness not to give evidence against an indicted person.

DISTANCE, (how measured). 5 El. & B. 92, 96; 6 *Id.* 350, 353.

— (in rule of court as to service). 7 Cow. (N. Y.) 419.

DISTILLED SPIRITS, (defined). 14 Blatchf. (U. S.) 92, 317.

DISTILLER, (who is a). 16 Blatchf. (U. S.) 547.

— (who is not a). 1 Pet. C. C. (U. S.) 180; 2 Wheat. (U. S.) 248.

DISTILLERY, (covenant against erection of). 45 N. Y. 499.

DISTINCTLY AND DEFINITELY SPECIFIED, (what is). 97 Mass. 494, 496.

Distinguenda sunt tempora, aliud est facere, aliud perficere: Times are to be distinguished; it is one thing to do, another to complete.

Distinguenda sunt tempora; distingue tempora, et concordabis leges (1 Co. 24): Times are to be distinguished; distinguish times, and you will make laws agree.

DISTINGUISH.—To point out an essential difference; to prove a case, cited as applicable, to be inapplicable.

DISTRACTIS.—A civil law term denoting the irregular sale of a pledge.

DISTRAHERE.—To sell; to draw apart; to dissolve a contract; to divorce.—*Calv. Lex.*

DISTRAIN—DISTREIN.—To distrain or distrein is to seize goods by way of distress (*q. v.*)

DISTRAINER, or DISTRAINOR.—He who seizes a distress.

DISTRAINT.—Seizure.

DISTRESS.—The act of taking movable property out of the possession of a wrong-doer, to compel the performance of an obligation, or to procure satisfaction for a wrong committed. (3 Bl. Com. 6; 3 Steph. Com. 245.) An ordinary distress is effected by seizing the goods and placing them in a pound (*q. v.*) Some goods are privileged or exempted from distress, such as things in personal use or occupation at the time, instruments of husbandry, and trade fixtures, things in the possession of a trader, but belonging to his customers, things in the custody of the law (*e. g.* goods seized under an execution), &c. Distress also signifies the property distrained. With reference to its origin, the right to distrain

is either given by common law, or by statute, or created by reservation or agreement between the parties.

§ 2. **Distress for rent**.—The principal kind of distress given by law is that used to compel payment of rent in arrear, especially by a landlord against his tenant. (Co. Litt. 47 a, 57 b; Woodf. Land. and T. 374. See RENT.) This kind of distress was formerly generally allowed in the United States, but of late years the remedy has been regarded with disfavor, as giving undue advantage to landlords over other creditors, and in many of the States it has been abolished.

§ 3. **For services**.—A right of distress (not often exercised) is given in England to every feudal lord, *e. g.* the lord of a manor, to compel his tenants to perform their services. "If an abbot or prior holds of his lord by a certain divine service . . . as to sing a mass everie Friday in the weeke . . . in this case, if such divine service be not done, the lord may distreynne." Litt. § 137. See TENURE. For other kinds of obsolete rights of distress, see Co. Litt. 169 b.

§ 4. A right of distress also exists to enforce payment of amercements (*q. v.*) in certain cases. 3 Bl. Com. 7.

§ 5. **Cattle damage-feasant**.—Another injury for which distresses may be taken, is where a man finds beasts of a stranger wandering in his grounds, *damage-feasant*, *i. e.* doing him hurt or damage by treading down his grass or the like, in which case the owner of the soil may distrein them till satisfaction be made him for the injury he has thereby sustained. *Id.*

§ 6. Distress also exists in name, though it is practically obsolete, as a mode of compelling obedience to the orders of courts of justice, *e. g.* to compel the attendance of jurors. See DISTRINGAS.

§ 7. **Statutory distress**.—A statutory, or statute distress is sometimes given as a remedy for duties and penalties inflicted by special statutes. See WARRANT.

§ 8. **Power of distress, conventional**.—In England, a remedy by distress, analogous to the ordinary distress for rent, is sometimes created by agreement between the parties to secure the performance of an obligation. Thus, an annuity deed may include a conveyance of land to a trustee with a power of distress whenever the annuity is in arrear.

With reference to the extent of the remedy, distresses are of three kinds—

§ 9. **Simple distress**.—Formerly every distress was a mere pledge or security, and this is still so in the case of distress of cattle, damage-feasant, distress for services, &c., which merely entitle the distrainer to retain the property until satisfaction is made. See LIEN.

§ 10. **Distress infinita**.—Where the distress is for fealty or suit of court, or to compel the attendance of jurors, and in other cases where it is the only remedy and merely gives the right of detaining the goods, it is called a "distress infinite," because it has no bounds with regard to its quantity and may be repeated from time to time, until the stubbornness of the party is conquered. 3 Bl. Com. 231; *Elt. Copyh.* 178.

§ 11. **Distress and sale**.—In the case of distress for rent, in England, for a crown debt and some other cases, if the amount is not paid within a certain time the distrainer may sell the property distrained and satisfy the debt out of the proceeds. (3 Bl. Com. 14.) In the United States, in the States where this remedy is retained, the statutes usually provide for a sale of the distress upon public notice being given.

§ 12. **Juridical nature of distress**.—Distress is an extra-judicial remedy. See REMEDY. See, also, LEVANT AND COUCHANT; REPLEVIN; RESCUE.

DISTRESS, (in a statute). 3 Daly (N. Y.) 455.

DISTRESS INFINITE, (defined). 3 Bl. Com. 231.

DISTRESS SALE.—See DISTRESS, § 11.

DISTRIBUTE, (in a statute). 11 Serg. & R. (Pa.) 224, 232.

DISTRIBUTED, (in a will, synonymous with "divided"). 21 Ala. 406, 412.

DISTRIBUTED, SETTLED, PAID AND DISPOSED OF, (in a will). 1 Russ. & G. (Nov. Sc.) 195.

DISTRIBUTION.—The act of dealing out to others; dispensation, in the sense of allotment or portioning out.

§ 2. In England, by the Stat. 22 and 23 Car. II. c. 10, commonly called the "statute of distributions," when the administrator of a deceased intestate has paid the expenses, debts, &c., he is directed to make "just and equal distribution of what remaineth clear amongst the wife and children or children's children, if any such be, or otherwise to the next of kindred to the dead person in equal degree," according to the rules contained in the statute; namely, if there is a widow and children, one-third is to go to the wife and the rest to the children in equal shares; if there are no children, then one-half is to go to the wife and the other half to the

next of kin; and if there is no wife, then the whole property is divided among the children or next of kin. (*Wms. Ex.* 1372.) In the United States there are, in the several States, statutes regulating the distribution of the estates of persons dying intestate, which, while following generally the plan of the English statute, differ from it and from each other in certain particulars.

§ 3. Formerly customs of distribution prevailed in certain places in England (*e. g.* the city of London), but they have been abolished. Stat. 19 and 20 Vict. c. 94; *Wms. Ex.* 1411. See NEXT OF KIN; PER CAPITA; REPRESENTATION.

DISTRIBUTION, (of newspaper). 13 N. Y. Week. Dig. 92.

DISTRIBUTIVE FINDING OF THE ISSUE.—The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively, *i. e.* in part for plaintiff and in part for defendant. Thus, in an action for goods sold and work done, if the defendant pleaded that he never was indebted, on which issue was joined, a verdict might be found for the plaintiff as to the goods, and for the defendant as to the work. *Steph. Pl.* (7 edit.) 77 d.

DISTRICT.—LATIN: *districtus*.

The circuit or territory within which a person may be compelled to appear.—*Cowell*. Circuit of authority; province.—*Encycl. Lond.* In modern usage the term has a wider meaning, and is applied to any division of territory for any purpose.

DISTRICT, (in United States statute). 9 Otto (U. S.) 441, 448.

— (in practice act). 44 Cal. 356.

— (in mortgage act). 84 Ill. 471.

DISTRICT AND PORT, (in revenue laws, used synonymously). 3 Mas. (U. S.) 153, 155.

DISTRICT ATTORNEY.—The prosecuting officer both of the National and State governments for a certain district of territory—in the States, generally a single county, but in some States several counties. The United States district attorneys each have charge of one of the judicial districts into which the country is divided for the purpose of administering justice in the federal courts.

DISTRICT COURTS.—

§ 1. **Of the United States**.—Federal courts established in every State, held by a single judge resident in the district.

These courts have original jurisdiction over all admiralty and maritime causes, and all proceedings in bankruptcy, and over all penal and criminal matters cognizable under the laws of the United States, exclusive jurisdiction over which is not vested either in the supreme or circuit courts.—*Abbott*.

§ 2. **Of States.**—Inferior courts of record in California, Connecticut, Iowa, Kansas, Louisiana, Minnesota, Nebraska, Nevada, Ohio and Texas are also called "district courts." Their jurisdiction is for the most part similar to that of county courts (*q. v.*)

DISTRICT COURTS, (jurisdiction of). 3 Minn. 72.

DISTRICT OF COLUMBIA.—A portion of the country, originally ten miles square, which was ceded to the United States by the States of Virginia and Maryland, over which the National government has exclusive jurisdiction.—*Bouvier*.

DISTRICT PARISHES.—Ecclesiastical divisions of parishes in England, for all purposes of worship, and for the celebration of marriages, christenings, churchings and burials; formed at the instance of the queen's commissioners for building new churches. *See* 3 Steph. Com. (7 edit.) 744.

DISTRICT REGISTRIES.—

§ 1. **High court.**—By the English Judicature Act, 1873, provision is made for the establishment of district registries of the High Court of Justice, and for the appointment of district registrars. (Section 60.) District registries have accordingly been established in the principal country towns of England and Wales. Order in Council, August, 1875.

§ 2. **Proceedings in.**—An action in the High Court proceeds in a district registry when the plaintiff has issued the writ in that registry and all the defendants have appeared there. A defendant is only bound to appear in a district registry, if he either resides or carries on business in the district; otherwise, he has the option of appearing in London. (Rules of Court, xii. 2 *et seq.* The defendant may, however, in certain cases, remove the action from the district registry into the High Court. Jud. Act, 1873, § 65; Rules of Court, xxxv. 11.) When an action proceeds in a district registry, all the proceedings in the action, down to and including final judgment, and the subsequent proceedings necessary to enforce it (including the issue of writs of execution, garnishee and charging orders), are taken in the district registry. (Jud. Act, 1873, § 64; Rules of Court, xxxv., including Amended Rules of June, 1876, April and May, 1880.)

The trial or hearing of the action must take place in the same way as if the action had been instituted in London, *i. e.* before a judge of the High Court in London or at the assizes, with or without a jury, according to the practice applicable to the particular case. (*Irlam v. Irlam*, 2 Ch. D. 608.) The district registrar may, however, enter judgment or make an order for an account, under Order XV., either by consent of the parties or by reason of the defendant's default. Order XXXV. 1a.

§ 3. **Jurisdiction of registrar.**—The district registrar exercises most of the functions of a judge at chambers; an appeal lies from him to a judge of the High Court sitting in chambers. *Id.* 4 *et seq.*

§ 4. The district registries are therefore in effect local branches of the central office and judges' chambers of the High Court, and are under the control of the court accordingly. *Id.* 9.

§ 5. **District land registries.**—District registries for the registration of the title to land may be formed under the Land Transfer Act, 1875, § 118. This part of the act does not seem to have been yet put in force.

§ 6. As to the district registries of the Probate Division of the High Court, *see* REGISTRY (subdivision *Probate and Divorce Registries*).

DISTRICT SURVEYOR, OR OTHER PERSON, (in a statute). Wilberf. Stat. L. 183.

DISTRICTIO.—A distress; a distraint.—*Cowell*.

DISTRINGAS.—A writ so called from its commanding the sheriff to distrain on a person for a certain purpose. The following are the principal instances in which it is used in England, the old *distringas* to compel appearance, the *distringas juratores*, and other varieties of the writ, having been abolished. Com. L. P. Act, 1852.

§ 2. **Distringas for recovery of chattel.**—A judgment for the delivery of any property other than land or money (*e. g.* a chattel) may be enforced by a writ which authorizes the sheriff to distrain the defendant by all his lands and chattels until he delivers it up. 3 Steph. Com. 582.

§ 3. **Distringas nuper vicecomitem.**—Where a writ of *fiery facias* has been sued out, and the sheriff, after returning that he has levied but that the goods remain in his hands for want of buyers, goes out of office, the execution creditor, instead of suing out a *venditioni exponas* (*q. v.*), may sue out a writ called a "*distringas nuper vicecomitem*" ("that you distrain the late sheriff"), directed to the present sheriff, commanding him to distrain the late sheriff to compel him to sell the goods. Arch. Pr. 585; Smith Ac. 197; Rules of April, 1880, form F. 12.

§ 4. **Distringas vicecomitem.**—A writ of *distringas*, directed to the coroner, may be issued against a sheriff if he neglects to execute a writ of *venditioni exponas*. Arch. Pr. 584.

§ 5. **Against corporation.**—A judgment against a corporation may be enforced by writ

of *distringas*, commanding the sheriff to distrain its lands and tenements, goods and chattels, so that it may not possess them until the court shall make order to the contrary. Dan. Ch. Pr. 401, 931. See SEQUESTRATION.

§ 6. To answer indictment.—*Distringas* is also applicable to compel a person, body of persons or corporation, against whom an indictment for misdemeanor or on a penal statute has been found, to appear and answer the charge. Arch. Cr. Pl. 81.

§ 7. *Distringas* on stock.—The commonest species of *distringas*, however, was that formerly issued by the Court of Exchequer, then by the Court of Chancery, and lastly by the High Court of Justice, to prevent a public company (most commonly the Bank of England) from permitting the transfer of a sum of stock in their books, or from paying the dividends on it, without previously giving notice to the person who had obtained the writ or "put on the *distringas*." The proceedings were, to a great extent, of a fictitious character, and have been recently simplified. Under the present practice no writ is issued, and in lieu of it a notice is given to the bank or other company to stop the transfer of stock or payment of dividends; this notice is filed in the central office, with an affidavit stating that the person giving it is beneficially interested in the stock; an office copy of the affidavit and a sealed copy of the notice are served on the bank or company. (Stat. 5 Vict. c. 5; Rules of Court, xlv. 2a *et seq.*, April, 1880.) In this rule the notice is simply called a "notice as to stock;" in practice, however, it is still called a "*distringas*."

§ 8. The proceeding is commonly used to prevent unauthorized or fraudulent dealings with stock by the person in whose name it is standing, *e. g.* a trustee. As soon as the bank receive a request from that person to permit a dealing with the stock, they give notice to the person who has served the *distringas* notice, and if he does not obtain an order or injunction from a court to restrain the dealing within eight days from the stockholder's request, the bank are compelled to allow the stockholder to deal with the stock. See RESTRAINING ORDER; STOP ORDER.

DISTRINGAS JURATORES.—A writ directed to the sheriff peremptorily commanding him to compel the appearance of jurors in court on a certain day therein appointed. This writ was abolished in England by the C. L. P. Act, 1852. 1 Archb. Pr. 365.

DISTRINGAS NUPER VICECOMITEM.—See DISTRINGAS, § 3.

DISTURB, (in a statute). 19 Ind. 181, 184; 28 Id. 364.

DISTURBANCE.—

§ 1. In the law of incorporeal hereditaments, disturbance is where a man infringes a right of easement, common, *profit à prendre*, franchise or similar right; *e. g.* by obstructing an ancient light. (Gale

Easem. 633 *et seq.*) The rights of the aggrieved person are the same as in a case of private nuisance, namely, either by abatement, action for damages, or injunction. (*Ibid.* 643.) Where the disturbance consists in refusing to pay toll for a market, ferry, &c., or in wrongfully putting beasts on a common, the person injured also has a right of distress. 3 Steph. Com. 411.

§ 2. **Disturbance of patronage.**—To the same class of injuries belongs (in England) disturbance of patronage, or the wrongful hindering or obstruction of a patron in the presentation of his clerk to a benefice; for this an action of *quare impedit* lies against the disturber, who may be the bishop alone, or a pretended patron and his clerk, or all three. 3 Steph. Com. 414; Phillim. Eccl. L. 445. See JUS PATRONATUS; USURPATION.

§ 3. **Disturbance of tenure.**—In the law of tenure, disturbance is where a stranger, by menaces, force, persuasion or otherwise, causes a tenant to leave his tenancy; this disturbance of tenure is an injury to the lord for which an action will lie. 3 Steph. Com. 414.

§ 4. **Public.**—As to public disturbances, see AFFRAY; BRAWLING; RIOT; UNLAWFUL ASSEMBLY.

DISTURBANCE, (of religious meeting). 34 N. Y. 141.

DISTURBANCE OF COMMON.—See DISTURBANCE, § 1.

DISTURBANCE OF FRANCHISE.—See DISTURBANCE, § 1.

DISTURBANCE OF PATRONAGE.—See DISTURBANCE, § 2.

DISTURBANCE OF TENURE.—See DISTURBANCE, § 3.

DISTURBANCE OF WAYS.—See DISTURBANCE, § 1.

DISTURBER.—If a bishop refuse or neglect to examine or admit a patron's clerk, without reason assigned or notice given, he is styled a disturber by the law, and shall not have any title to present by lapse; for no man shall take advantage of his own wrong. 2 Bl. Com. 278.

DISTURBING, (in crimes act). 1 Ky. L. J. 184. **DITCH**, (defined). 5 Gray (Mass.) 61, 64.

DITTAY.—In the Scotch law, the matter of charge or ground of indictment against a person accused of a crime.—*Wharton*.

DIVERSION.—A turning aside or altering the natural course of a thing. The term is chiefly applied to the unau-

thorized changing the course of a water-course to the prejudice of a lower proprietor.

DIVERSION OF A STREAM, (defined). 17 Conn. 288, 299.

DIVERSION OF WATER, (relief against, by injunction). 6 Paige (N. Y.) 435.

DIVERTING, (a stream of water). Coxe (N. J.) 460.

DIVERTING AND TURNING A STREAM OF WATER, (in a declaration). 6 Price 1.

DIVERS DAYS AND TIMES, (in a declaration). 6 Mod. 38, 39.

DIVERS MONTHS, (in a declaration). 1 Ld. Raym. 611.

DIVERS OTHER DAYS AND TIMES, (in a declaration). 11 East 451, 455.

—— (in an indictment). 17 Wend. (N. Y.) 475, 476; 3 Barn. & C. 502, 508.

DIVERS OTHER MATTERS, (in a submission). 2 Cai. (N. Y.) 320; 1 Wheel. Am. C. L. 422; 1 Com. Dig. 662.

DIVERS OTHER GOOD CAUSES AND CONSIDERATIONS, (in a deed). 1 Harr. & J. (Md.) 527; 8 Com. Dig. 1044.

DIVERS SUMS OF MONEY, (in a declaration). 5 Mau. & Sel. 65, 67.

DIVERSITY.—See **COLLATERAL**, § 5.

DIVES.—LATIN: *dives*, a rich man.

In the practice of the English Chancery Division, "dives costs" are costs on the ordinary scale, as opposed to the costs formerly allowed to a successful pauper suing or defending *in forma pauperis*, and which consisted only of his costs out of pocket. Dan. Ch. Pr. 43; Cons. Ord. xl. 5. See **IN FORMA PAUPERIS**.

DIVEST.—To divest is to take away from a person an estate or interest which has already vested in him. The term is generally used with reference to gifts by will. Thus, where a testator gives property to A. for life, and after his death to B., and then directs that on a certain event the property shall go to C., then B. takes a vested estate or interest subject to being divested on the happening of the event. (*Whitter v. Bremridge*, L. R. 2 Eq. 736. See *In re Peek's Trusts*, L. R. 16 Eq. 221.) The rule is that if the substituted legatee or devisee (C.) cannot take, then the original estate becomes absolute. Thus, where a testator gave property to A. for her life, and after her death to her heirs, &c.; but in case A. should marry and have no child, then the property to belong to B.; A. married and had no child, and B. died in her life-time without issue; it was held that A.'s estate became absolute. *Jackson v. Noble*, 2 Keen 590; *Jarm. Wills* 823. See **DEFEASIBLE**.

Divide et impera, cum radix et vertex imperii in obedientium consensu rata sunt (4 Inst. 35): Divide and govern, since the foundation and crown of empire are established in the consent of the obedient.

DIVIDED AMONGST YOU, (in a will). 3 Ves. & B. 54.

DIVIDED EQUALLY, (in a will). 12 Bush (Ky.) 369.

DIVIDED, TO BE, (in a surrender of a copyhold). 12 Mod. 296, 298.

DIVIDEND.—A share, the part allotted in division; the interest paid on corporate stock, or public funds; the division of a bankrupt's or insolvent's effects.

DIVIDEND, (defined). 13 Allen (Mass.) 400, 404; 31 Mich. 76, 79; 12 N. Y. 325, 335.

—— (synonymous with "distributive share"). 76 N. C. 103, 105.

—— (what is a). 22 Wall. (U. S.) 38, 41; 1 Dev. & B. (N. C.) Eq. 545.

—— (in act for incorporation of insurance companies). 3 Abb. (N. Y.) App. Dec. 418; 5 Abb. (N. Y.) Pr. n. s. 1; 48 Barb. (N. Y.) 463; 37 How. (N. Y.) Pr. 63; 3 Keyes (N. Y.) 521; 12 N. Y. 325, 335.

DIVIDENDA.—In old records, an indenture; one part of an indenture.

DIVIDENDS, (in a will). 10 Ves. 185, 190; 18 Id. 463, 467.

—— (in apportionment act). 12 Ch. D. 655.

DIVIDENDS OR PERIODICAL PAYMENTS, (in apportionment act). 9 Ch. D. 159.

Divinatio, non interpretatio, est quæ omnino recedit a litera (Bac. Max.): It is guessing, not interpretation, which altogether departs from the letter.

DIVINE SERVICE, TENURE BY.—An obsolete holding, in which the tenants were obliged to perform some special divine services, as to sing so many masses, to distribute such a sum in alms, &c. Litt. § 137.

DIVINE SERVICE, (Sunday school is not a). 73 Pa. St. 39, 45; 13 Am. Rep. 726, 731.

DIVISA.—A device, award, or decree; also a devise; also bounds or limits of division of a parish or farm, &c.—*Cowell*. A court held on the boundary, in order to settle disputes of the tenants.—*Anc. Inst. Eng.*

Divisibilis est semper divisibilis: A thing divisible may be forever divided.

DIVISION.—See **COURT OF APPEAL**. **HIGH COURT OF JUSTICE**.

DIVISION, (defined). 4 T. R. 224, 459.

—— (in religious society). 5 Bush (Ky.) 401, 415.

DIVISION, EQUAL, (of court, effect of). Penn (N. J.) 479.

DIVISION OF COUNTY, (effect of, on status of paupers). 4 Halst. (N. J.) 61.

DIVISION OF OPINION.—See CIRCUIT COURTS, § 1.

DIVISION OF OPINION OF JUDGES, (what is such a division as may be certified to Supreme Court). 6 Wheat. (U. S.) 542.

DIVISION OF TERRITORY, (effect of, on rights of residents). 2 Halst. (N. J.) 337; 3 Johns. (N. Y.) 193; 2 Johns. (N. Y.) Ch. 336.

DIVISIONAL COURTS.—Courts in England, consisting of two, or (in special cases) more judges of the High Court of Justice, sitting to transact certain kinds of business which cannot be disposed of by one judge. When the High Court was first formed it was intended that the Divisional Courts should take the place of the sittings in banc of the old Common Law Courts, (Jud. Act, 1873, § 41. See BANC;) but by the Appellate Jurisdiction Act, 1876, it was enacted that all proceedings in an action subsequent to the hearing or trial should, so far as is practicable and convenient, be taken before the judge before whom the trial or hearing took place. The business transacted before Divisional Courts consists principally of crown, revenue and election petition business, appeals from county courts, appeals from chambers in the Common Law Divisions, and applications for a new trial in the same divisions where the action has been tried with a jury. Rules of Court, lvii. a.

§ 2. Divisional Courts must not be confounded with the Divisions of the High Court, which are quite different things. The present practice is for one Divisional Court to sit for business arising in all the three Common Law Divisions. Divisional Courts may also be held in the Chancery and Probate, Divorce and Admiralty Divisions, (Jud. Act. 1873, §§ 43, 44,) but in practice this is never done.

DIVORCE.—A term adopted by the Ecclesiastical Courts to signify an interference by them with the relation of husband and wife. It is of two kinds—a divorce *a mensa et thoro* ("from bed and board"), granted, in England, in cases where the husband or wife had been guilty of such conduct as to make conjugal intercourse impossible, as in the case of adultery, cruelty, desertion, &c., (Gibs. Cod. 445 n. (b); Browne Div. 29;) and in America on the same grounds, except that of adultery; and a divorce *a vinculo matrimonii* ("from the bond of marriage"), granted, in America, on various grounds, in the several States, of which adultery, cruelty and desertion are the chief; and in England, where the marriage was voidable or void *ab initio*, as in the case of the

parties being within the prohibited degrees, or one of them having been already married, or being impotent. (Gibs. 446 n. (c); Co. Litt. 235 a.) The former is now represented, in England, by judicial separation, the latter by a decree of nullity of marriage (*q. v.*); and see DISABILITY, § 5; also, A MENSA ET THORO; A VINCULO MATRIMONII.

The term "divorce" is now applied, in England, both to decrees of nullity and decrees of dissolution of marriage, while in America it is used only in cases of divorce *a mensa* or *a vinculo*, a decree of nullity of marriage being granted for the causes for which a divorce *a vinculo* was formerly obtainable in England. See DISSOLUTION, § 6.

DIVORCE, (defined). 1 Bl. Com. 440.

DIVORCE A MENSA ET THORO, (grounds for). Sax. (N. J.) 96.

DIVORCE A VINCULO MATRIMONII, (effect of). *Ib.*

DIVORCE COURT.—See COURT FOR DIVORCE AND MATRIMONIAL CAUSES; PROBATE, DIVORCE AND ADMIRALTY DIVISION.

DIVORCED, WHEN SHE IS, (in a will.) 10 Serg. & R. (Pa.) 208; 5 Wheel. Am. C. L. 558.

Divortium dicitur a divertendo, quia vir divertitur ab uxore (Co. Litt. 235): Divorce is called from *divertendo*, because a man is diverted from his wife.

DO.—I give. Used in the Roman law, in such phrases as—

Do lego: I give, I bequeath.

Do ut des: I give that you may give.

Do ut facias: I give that you may do. The first-named phrase being of common use in wills, and the other two serving to designate two of the four classes of "innominate" contracts.

Do AN ACT, (in a covenant). 1 Ld. Raym. 279.

Do AND PERFORM, (synonymous with "submit to," "stand to," "abide"). 62 Me. 236, 239.

Do THE NEEDFUL, (construed). 4 Esp. 65, 66.

Do, OR CAUSE TO BE DONE, (in a lease). 3 Barn. & Ad. 299, 302.

Do, OR PUT AWAY, (defined). 2 Wm. Bl. 767.

DOCK.—(1) The place or cage in a court of criminal law in which a prisoner is placed during his trial. (2) An open space between two wharves or piers. (3) To curtail or diminish, as to dock an entail.

Dock, (in a statute). 9 Wend. (N. Y.) 571, 591.

DOCK WARRANT.—A document issued by a dock company or dock owner in England, stating that certain goods therein mentioned are deliverable to a person therein named, or to his assigns, by indorsement. Dock warrants in form resemble bills of lading (*q. v.*), but they differ from them in this, that when goods are at sea a purchaser who takes a bill of lading has done all that is possible to obtain possession of them, while a purchaser who takes a dock warrant can at any moment lodge it with the dock company, and so take actual or constructive possession of the goods. It therefore seems that the indorsement of a dock warrant does not at common law pass the ownership in the goods, or divest the vendor's lien if the goods have not been paid for, but merely operates as a constructive delivery of them as between the indorser and indorsee, until the dock company has "attorned" to the indorsee by agreeing to hold the goods for him. (Benj. Sales 573, 674; *Attenborough v. L. & St. K. Docks Co.*, 3 C. P. D. 373, 450. See **DELIVERY ORDER**; **DOCUMENT OF TITLE**.) Dock warrants, however, are included in the Factors' Acts among the "documents of title," the possession of which gives a factor power to confer a good title to the goods on persons dealing with him in good faith. Benj. Sales 668. See **FACTORS' ACTS**; **WAREHOUSE RECEIPT**.

DOCKAGE, (defined). 1 Newb. Adm. 69, 71.

DOCKET, or **DOCQUET**.—(From "dock," to cut) is an epitome or abstract of a judgment, decree, order, &c.

§ 2. **Enrolment.**—In English Chancery practice, a docket was formerly used for the purpose of enrolling a decree or order of the court. (See **ENROLMENT**.) It consisted of a statement of the filing of the bill, petition, &c., and the other pleadings or proceedings; a recital of the decree made on the hearing, and the adjudication or adjudicatory part (*q. v.*), which set forth the mandatory part of the decree. It was certified by the clerk of records and writs, signed by the lord chancellor, engrossed on parchment in the form of a continuous roll, and deposited at the Public Record Office, when it became a record (*q. v.*) Dan. Ch. Pr. 882; Braith. Pr. 446.

§ 3. **Judgment.**—By Stat. 4 and 5 Will. & Mary, c. 20, an alphabetical index or docket of judgments was directed to be kept by the clerk of the dockets in each of the superior courts of the common law, in order to give notice to intending purchasers of land from judgment debtors, because the judgment bound the land of the debtor from its date, even if the land had been sold before execution was issued. These dockets were closed by Stat. 2 and 3 Vict. c. 11, the provisions for registration of judgments (*q. v.*) having made them unnecessary. (1 Wms. Real Prop. 85.) Similar judgment docket books are kept in the offices of the clerks of courts in many of the States.

DOCKET, (defined). 1 Bradf. (N. Y.) 343, 344; 10 So. Car. 278, 297.

DOCTOR, (in a contract). 4 E. D. Smith (N. Y.) 1.

DOCTOR AND STUDENT.—Saint Germain is an author who gained considerable note in the reign of Henry VIII. by this famous book. The first dialogue of this work came out in 1518, in Latin, with the following title: *Dialogus de Fundamentis Legum Angliæ et de Conscientiâ*. The second dialogue was printed in English, in 1530, and the next year there appeared a translation of the first dialogue. Both afterwards passed several editions, under the title of "Doctor and Student." The "Doctor and Student" consists of two dialogues between a doctor of divinity and a student of the common law. These contain discussions on the grounds of our law, and where objections had been stated to some of its rules and maxims, it is endeavored to reconcile them with reason and good conscience. The whole is treated in a popular way, with the freedom and language of conversation, conveying, by means of objections and their answers, not an unsatisfactory account of many principles and points of the common law. (4 Reeves Hist. Eng. Law, ch. xxx., pp. 416, 418.)—Wharton.

DOCTORS COMMONS.—The popular name for the buildings in which the Ecclesiastical and Admiralty Courts, and the college of advocates practicing in those courts, were formerly held in London. The courts and college were built in 1567, and the college was incorporated in 1786, under the title of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts" (Phillim. Ecc. L. 1218), whence the popular name.

DOCUMENT.—

§ 1. **Defined.**—A document is any solid substance upon which matter has been expressed or described by conventional signs, with the intention of recording or transmitting that matter. Thus, a piece of paper on which words are written, lithographed, printed or stamped, or expressed by arbitrary signs or ciphers, is a document; and so is a tally or piece of wood with notches to represent figures or amounts. Best Ev. 300.

§ 2. **Public.**—In the law of evidence, documents are either public or private. A public document is one recording facts which have been inquired into or taken notice of for the benefit of the public by an agent authorized and accredited for the purpose. Such are statutes, judgments and proceedings of courts, records generally, registers of births, deaths and marriages, and other registers (*q. v.*) *Id.* 304. "It should be a public inquiry, a public document, and made by a public officer. I do not think that 'public' . . . is to be taken in the sense of meaning the whole world. I think an entry in the books of

a manor is public in the sense that it concerns all the people interested in the manor. . . . But it must be a public document, and it must be made by a public officer. I understand a public document . . . to mean a document that is made for the purpose of the public making use of it, and being able to refer to it. It is meant to be where there is a judicial, or quasi-judicial, duty to inquire." *Per* Lord Blackburn, *Sturla v. Freccia*, 5 App. Cas. 643. •

§ 3. Public documents are admissible as evidence of the truth of the facts stated in them without being verified on oath, some being conclusive on all the world, while others (and the greater number) merely afford *prima facie* evidence, *i. e.* hold good until they are disproved. (Best Ev. 305.) Hence public documents are sometimes said to prove themselves. (Dan. Ch. Pr. 757.) It is, however, in many cases unnecessary to produce the original of a public document, many statutes having provided for the proof of such documents by authenticated or official copies. *See* CERTIFIED COPY. *See, also*, COPY; EXEMPLIFICATION.

§ 4. Private documents include deeds, wills, agreements and the like. Of course when a will has been proved, it becomes a public document. (*See* PROBATE.) As to private documents which prove themselves, *see* ANCIENT WRITINGS.

§ 5. A document of title is a document which enables the possessor to deal with the property described in it as if he were the owner. In this way a bill of lading represents the goods while they are at sea, and by it, when the goods arrive at the port of destination, the possession of the goods may be obtained (*Gunn v. Bolckow, Vaughan & Co.*, L. R. 10 Ch. 502,) either by the person to whom the bill of lading was originally given, or by a person to whom he has transferred it, which he may do absolutely or by way of charge, &c. Some documents of title (as in the case of a bill of lading) pass the ownership of the goods represented by them, while others, such as delivery orders and dock warrants (*q. v.*), are mere authorities to obtain delivery of them. *See* Benj. Sales 673. *See, also*, NEGOTIABLE.

DOCUMENTS AND RECEIPTS, (in a declaration). 12 Mass. 505, 512.

DODERIDGE.—John Doderidge was born in 1555, was appointed justice of the king's bench in 1612, and died in 1628. (Foss Biog. Dict.) The work on conveying, known as "Sheppard's Touchstone of Common Assurances," is generally attributed to him. Hilliard's Preface to the Touchstone.

DOE, JOHN.—The fictitious plaintiff in ejectment, whose services have been dispensed with since the abolition of the fiction. *See* EJECTMENT.

DOER.—In the Scotch law, an agent or attorney.

DOG, (is "personal property" within larceny act). 13 N. Y. Week. Dig. 74.

—— (trover will lie to recover). Cro. Eliz. 125.

—— (when killing justified). 9 Johns. (N. Y.) 233; 13 *Id.* 312.

DOG-DRAW.—The manifest deprehension of an offender against venison in a forest, when he was found drawing after a deer by the scent of a hound led in his hand; or where a person had wounded a deer or wild beast, by shooting at him, or otherwise, and was caught with a dog drawing after him to receive the same. Manw. pt. 2, c. viii.

DOG-LATIN.—The Latin of illiterate persons; Latin words put together on the English grammatical system.

DOGGER.—A light ship or vessel; *dogger-fish*, fish brought in ships.—*Cowell*.

DOGGER-MEN.—Fishermen that belong to dogger-ships.

DOGMA.—In the Roman law, an ordinance of the senate.

DOITKIN, or DOIT.—A base coin of small value, prohibited by the Stat. 3 Hen. V. c. 1. We still retain the phrase, in the common saying, when we would undervalue a man, that he is not worth a doit.—*Jacob*.

DOLE.—ANGLO-SAXON: *dal, dæl*, a portion. Skeat Etym. Dict.

§ 1. A dole is a share in waste or common land. Thus, in England, open meadows are frequently divided into allotments called "doles" or "lots," the ownership of which is shifted among the whole body of proprietors in yearly rotation, determined by lot or similar methods (Elt. Com. 31; Blount Ten.; Blount Dict. *v.* Dole); hence such fields are sometimes called "dole-meadows." *See* COMMON, § 4; OPEN FIELDS; SHACK.

§ 2. Sometimes the right to take the whole of the turf from a given piece of land is vested in a number of persons, who may either have

doles, *i. e.* separate portions of turf-land allotted to them, or take the turf from any part of the land. Such a dole, although similar to a common of turbary (*see* COMMON, § 13), is not a common, but an interest in land. *Elt. Com.* 103.

§ 3. Under the customs of certain mining districts, waste lands are frequently divided into doles, (called "doles of lead," "doles of tin," &c.,) each of which is worked by a separate miner (Blount; *see* TINBOUNDING); these doles also are interests in land. *Elt. Com.* 116.

DOLE-FISH.—The share of fish which the fishermen employed in the north seas customarily received for their allowance. 35 *Hen. VIII. c. 7.*

DOLE-MEADOW.—*See* DOLE, § 1.

DOLES, or DOOLS.—Slips of pasture left between the furrows of ploughed land.

DOLG-BOTE.—A recompense for a scar or wound.—*Cowell.*

DOLI CAPAX.—Capable of crime. Able to distinguish between good and evil. *See* CAPAX DOLI.

DOLI INCAPAX.—Incapable of crime. *See* CAPAX DOLI.

DOLLAR.—The unit employed in the United States in calculating money values. It is coined both in gold and silver. For a minute description of the various silver dollars of different dates of coinage, *see* *Bouvier.*

DOLLARS, (defined). 3 *Woods (U. S.)* 404, 407; 3 *C. E. Gr. (N. J.)* 139.

— (means "current money"). 2 *Gr. (N. J.)* 543.

— (in a check). 35 *Ill.* 440, 443.

Dolo facit qui petit quod redditurus est: He acts with guile who demands that which he will have to return.

Dolo malo pactum se non servaturum (D. 2, 14, 7, § 9): An agreement induced by fraud cannot stand.

Dolus versatur in generalibus (2 *Co.* 34): A deceiver deals in generalities.

DOLUS.—In Roman law, fraud, wilfulness, or intentionality. In that use it is opposed to *culpa*, which is negligence merely, in greater or less degree. The policy of the law may sometimes treat extreme *culpa* as if it were *dolus*, upon the maxim *culpa dolo comparatur*. A person is always liable for *dolus* producing damage, but not always for *culpa* producing damage, even though extreme, *e. g.* a depositary is only liable for *dolus*, and not for negligence.—*Brown.*

Dolus auctoris non nocet successori: The fraud of a predecessor prejudices not his successor.

Dolus circuitu non purgatur (*Bac. Max.* 4): Fraud is not purged by circuitry.

Dolus dans locum contractui: Fraud or deceit giving occasion for the contract. This phrase is applied to a false representation when it is such as to induce the contract. The phrase is commonly used in expressing the rule that a contract is not voidable for misrepresentation unless the representation was *dans locum contractui*, *i. e.* unless it induced the misled party to enter into the contract. Therefore, if the person to whom the false representation was made did not rely on it, but made further inquiries, he could not afterwards make use of it to avoid the contract. *Attwood v. Small*, 6 *Cl. & F.* 444.

Dolus est machinatio, cum aliud dissimulat aliud agit (*Lane* 47): Deceit is an artifice, since it pretends one thing and does another.

Dolus et fraus nemini patrocinar debent: Deceit and fraud ought to excuse no man.

DOLUS MALUS.—Opposed to *dolus bonus*, *i. e.* artifice which the law considers honestly employed. This phrase means fraud. *Sand. Inst.* (5 edit.) 318, 433, 471.

Dolus versatur in generalibus: Fraud deals in generalities, *i. e.* one who intends to deceive a person contracting with him, generally uses vague and uncertain language in expressing what he binds himself to do, in order to provide an escape from his obligations.

DOM. PROC.—An abbreviation of *Domus Procerum*. The house of lords.

DOMAIN.—(1) Dominion; ownership; the right of possession and disposal of property—generally land. (2) The land itself over which dominion is held; but there should be a distinction observed between "domain" and "property," the first expressing the rights of the possessor or owner, and the other the thing possessed or owned.

DOMAT.—Jean Domat was born at Clermont, in 1625, and died in Paris, in 1695. His chief work is *Les Loix Civiles Dans Leur Ordre Naturel*. He also wrote *Le Droit Public* and *Legum Delectus*. *Holtz. Encycl.*

DOM-BOC, or DOME-BOOK.—A book composed under the direction of Alfred, for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom. This book is said to have been extant so late as the reign of Edward IV., but it is now lost. It probably contained the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial pro-

cedings. This much at least may be collected from the injunctions to observe it which were found in the laws of Edward the Elder, son of Alfred. (1 Bl. Com. 64.) Alfred has generally been styled the *legum Anglicanarum conditor*, as Edward the Confessor is the *restitutor*; but Palgrave says, "the authentic code of the legislature does not support these assertions. The laws of Alfred abound in valuable regulations of criminal jurisprudence, but they are entirely silent with respect to those institutions which, according to later historians, are to be ascribed to his sound policy and wisdom."—*Wharton*.

HOME.—See DOOM.

DOMESDAY, or DOMESDAY-BOOK.—A most ancient record made in the time of William the Conqueror, and now remaining in the exchequer fair and legible, consisting of two volumes, a greater and lesser; the greater containing a survey of all the lands in England, except the counties of Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire, which, it is said, were never surveyed; and excepting Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. There is also a third book, which differs from the others in form more than in matter, made by command of the same king. And there is a fourth book kept in the exchequer, which is called "domesday," and, though a very large volume, is only an abridgment of the others. Likewise a fifth book is kept in the remembrancer's office in the exchequer, which has the name of domesday, and is the same as the fourth above mentioned. Our ancestors had many dome-books. The question whether lands are ancient demesne or not is to be decided by the domesday of Will. I., whence there is no appeal. The addition of "day" to this dome-book, was not meant for an allusion to the final day of judgment, as most persons have conceived, but was to strengthen and confirm it, and signifies the judicial decisive record or book of doom-judgment. (*Spel. Gloss.*; 1 Reeves Hist. Eng. Law 219.)—*Wharton*.

DOMESMEN.—An inferior kind of judges. Men appointed to doom (judge) and determine matters in controversy.—*Cowell*; *Jacob*. Suitors in a court of a manor in ancient demesne, who are judges there.—*Termes de la Ley*.

DOMESTIC ANIMALS, (what are). 2 Allen (Mass.) 207, 209.

DOMESTIC ATTACHMENT.—A species of attachment against resident debtors who absent or conceal themselves, as foreign attachment (*q. v.*) is against non-residents. 20 Pa. St. 144. See ATTACHMENT, § 2.

DOMESTIC BILL OF EXCHANGE.—See BILL OF EXCHANGE, § 9.

DOMESTIC DISTILLED SPIRITS, (in a statute). 64 Pa. St. 100, 103.

DOMESTIC SERVANTS, (who are). 6 La. Ann. 276, 277.

— (who are not). 43 Tex. 456.

DOMESTICS.—Menial servants (so-called from being *intra mœnia domûs*, within the walls of a house). Laborers employed out of doors are not domestics. The contract between them and their masters arises upon the hiring. In England, it is usual to engage domestic servants at a fixed amount of wages per annum; in America, the hiring is usually by the month. There is generally no express stipulation as to the time that the service is to last; and when the terms are not otherwise defined, the contract is thus understood, that either party may determine the service at pleasure, upon a month's warning, or upon payment of a month's wages. See MASTER AND SERVANT.

DOMESTICUS.—In old European law, a *seneschal*, steward or *major domo*; a judge's assistant; an assessor (*q. v.*)—*Spel. Gloss.*

DOMICELLA.—In old English law, a damsel.

DOMICELLUS.—(1) A better sort of servant in monasteries. (2) An appellation of a king's bastard.—*Encycl. Lond.*

DOMICILE.—LATIN: *domicilium*, from *domus*, a house or home, and *colere*, to inhabit. In Roman law there was no opportunity for questions of domicile (in our sense of the word) to arise, because there was one system of law for the whole of the civilized world. The empire was divided into municipalities or local self-governed districts (*civitates* or *respublicæ*), all subject to the *jus commune* or imperial law, but having peculiar constitutions, jurisdictions and legislatures. Every subject of the empire was a member of at least one of these municipalities, either by *origo*, which was the case when he had been born, adopted or manumitted in it, or by *domicilium* (*Coû. X. 39. 7*; *Dig. L. i. 1*), which was the case when he voluntarily chose the municipality as the chief place of his business and pleasure. (*Ibid.*; *Dig. L. i. 27, § 1*; *L. 16. 203*.) *Domicilium*, therefore, was merely a peculiar mode of becoming a member of a municipality, with its accompanying incidents of burdens and liabilities; consequently a person could at the same time have an *origo* in one municipality and a *domicilium* in another or in several others (The whole subject is exhaustively treated by Savigny, *System*, viii. §§ 350-359; *Sav. Pr. Int. Law*, 42 *et seq.*), just as a person at the present day may be rated in respect of several parishes. Many modern writers seem to suppose that the Roman *domicilium* is exactly equivalent to our "domicile," and quote the definitions and principles of the Roman law as authorities on the subject. (See, especially, Story Conf. L. The possibility of a Roman having several *domicilia* is quoted as an argument for the existence of the same rule in English law, *infra*, § 8.) The same ignorance has given rise to the barbarous expression *domicilium originis*, which purports to be the equivalent for "domicile of origin" in Roman law, where it would have been an impossible combination, *domicilium* and *origo* being opposed to one another. Savigny, viii. 105. See LEX LOCI; NATIONALITY; RESIDENCE.

§ 1. Domicile is the legal home of a person, or that place where the law presumes that he has the intention of perma-

nently residing, although he may be absent from it or even never have been there. (*Infra*, § 4.) See Westl. Pr. Int. Law 28, and the various definitions of domicile quoted in Phillim. ch. ii. They generally err in being applicable only to domicile of choice. *Infra*, § 7.

§ 2. The question where a person is domiciled may be important, because it is by the law of that place that his civil status, so far as it is independent of his voluntary acts, is regulated. Thus, in England, the question whether one person can contract a legal marriage with another is decided, not by the law of the country where he happens to go through the ceremony, but by the law of his domicile, (*Sottomayer v. De Barros*, 3 P. D. 1; *Niboyet v. Niboyet*, 4 P. D. 1. But where the parties have different domiciles, see *Sottomayer v. De Barros*, 5 P. D. 94; *Harvie v. Farnie*, 5 P. D. 153. The prevailing rule is otherwise in the United States. Story Conf. L., § 103;) so the legitimacy and majority of a child (except with reference to his capacity of inheriting real estate, *Doe d. Birtwhistle v. Vardell*, 5 Barn. & C. 438; see 2 Bl. Com. 248, n. (11)) depend on the law of its parents' domicile, (see *Skottowe v. Young*, L. R. 11 Eq. 474; *In re Hellermann's Will*, L. R. 2 Eq. 363;) and the manner in which personal estate devolves on the death of the owner is regulated not by the law of the country where he dies, nor by that of the place where the property is, but by the law of his domicile. (1 Jarm. Wills (4 edit.) 2.) Real estate is regulated by the *lex loci rei sitæ* (q. v.) Formerly, also, in England, a will of personal estate had to be made according to the formalities required by the law of the country where the testator was domiciled at the time of his decease; but this rule has been abolished as to wills made after the 6th August, 1861, and it is now sufficient if a will made out of the United Kingdom by a British subject was made according to the forms required either by the law of the place where it was made, or by the law of his domicile at the time, or by the law of his domicile of origin. Wms. Pers. Prop. 365; Stat. 24 and 25 Vict. c. 114.

§ 3. Corporations and companies are

also sometimes said to have domiciles when their operations are carried on in one country and their administration or direction in another. Thus, a company formed in England to construct a railway in Germany, and having its principal seat of administration in England, would be said to be domiciled in England. See Savigny Syst. viii. 65; *Buenos Ayres, &c., Rail. Co. v. Northern Rail. Co.*, 2 Q. B. D. 210. See, also, NON-RESIDENT; RESIDENT.

Domicile is of three kinds—

§ 4. **Domicile of origin.**—The domicile of origin or birth (natural domicile) is that which a child receives from its parents at its birth. Every person preserves his domicile of origin until he acquires another domicile, and on his abandoning or losing an acquired domicile, his domicile of origin revives. Thus, if a husband and wife domiciled in England take a voyage to India, and a child is born to them on the voyage, or in India before they acquire a domicile there, its domicile is English, (*Somerville v. Somerville*, 5 Ves. 749;) if the child grows up and settles in India, he acquires an Indian domicile (*infra*, § 8;) if he leaves India with the intention of settling permanently in America, he loses his Indian domicile, and his English domicile revives, so that if he dies before reaching America, the succession to his personal property will be regulated by English law. *Udny v. Udny*, L. R. 1 Sc. App. 441.

§ 5. **Necessary domicile.**—Domicile by operation of law (necessary domicile) is that which attaches to a person independently of his or her will, and without reference to birth, residence or other facts.

§ 6. Thus the domicile of an infant follows that of his father, so that if the father changes his domicile, the infant's domicile *ipso facto* changes too. (As to whether the mother or guardian of an infant whose father is dead can influence his domicile, see Phillim. Dom. 37.) So the domicile of a wife follows that of her husband. As to the domicile of a wife deserted or judicially separated from her husband, see *Le Sueur v. Le Sueur*, 1 P. D. 189. As to the domicile of a widow, see Phillim. Dom. 27.

§ 7. **Domicile of choice** arises where a person having the power of changing

his domicile, voluntarily abandons his existing domicile and settles in another country with the intention of permanently residing there (*animo manendi*). (Lord v. Colvin, 4 Drew. 366.) Questions of change of domicile are proverbially difficult to determine, owing to the ambiguity of ordinary conduct; thus, a person may have lived many years abroad without having acquired a foreign domicile, if it appears that his reason for so doing was a desire to avoid his creditors or the like. "Although residence may be some small *primâ facie* proof of domicile, it is by no means to be inferred from the fact of residence that domicile results, even although you do not find that the party had any other residence in existence or in contemplation." (Bell v. Kennedy, L. R. 1 Sc. App. 321.) So an ambassador or public minister does not acquire a domicile in the country where he resides as a matter of duty.

§ 8. **Principal domicile.**—Some writers affirm that a person may have two domiciles, one of them being called the "principal domicile." (See Phillim. ch. 3.) The doctrine seems contrary to the principles of English law, except in this sense, that a person may be domiciled in one place according to the law of one country, and domiciled in another place according to the law of another country. Thus, the fact of a Frenchman having resided in England for a number of years may be sufficient to give him an English domicile according to English law, and yet not sufficient to divest him of his French domicile according to French law.*

* *Udny v. Udny*, L. R. 1 Sc. App. 441. The error seems to have arisen partly from a misapprehension of the meaning of *domicilium* in Roman law, partly from a confusion between domicile and nationality (*q. v.*) For other points as to domicile, see *Platt v. A. G. of New South Wales*, 3 App. Cas. 336; *Hamilton v. Dallas*, 1 Ch. D. 257, where it was decided that the provisions of the Code Napoléon, § 13, requiring the authorization of the French government as the condition for the enjoyment of full civil rights by a foreigner resident in that country, do not prevent the acquisition, by simple residence *cum animo manendi*, of a "*de facto* domicile" governing the devolution of his personal property. By this seems to be meant, not that a person may have a domicile *de facto* in one country, and one *de jure* in another, but that he may acquire a domicile without thereby acquiring the enjoyment of all civil rights (in other words,

DOMICILE, (defined). 8 Cranch (U. S.) 253, 278; 52 Me. 165, 173; 10 Mass. 488, 501; 23 Pick. (Mass.) 170, 176; 2 Dougl. (Mich.) 515, 523; 27 Miss. 704, 718; 8 Abb. (N. Y.) Pr. 78, 97; 31 Barb. (N. Y.) 475; 4 *Id.* 504; 1 Bosw. (N. Y.) 673; 1 Bradf. (N. Y.) 69; 9 How. (N. Y.) Pr. 272; 40 *Id.* 263; 5 N. Y. 422; 8 Paige (N. Y.) 519, 524; 1 Wend. (N. Y.) 43, 45; 3 Vr. (N. J.) 194.

— (synonymous with "dwelling-place," "residence" or "home"). 4 Kan. 232, 238; 43 Me. 406, 419; 99 Mass. 587, 591; 19 Minn. 488, 492; 59 Mo. 238, 242.

— (distinguished from "residence"). 42 Miss. 186, 192; 4 Barb. (N. Y.) 504, 520; 5 Sandf. (N. Y.) 44; 2 Robt. (N. Y.) 701.

— (distinguished from "dwelling-place" and "home"). 19 Me. 293, 301.

— (not synonymous with "inhabitaney" or "residence"). 16 Gray (Mass.) 337, 340; 8 Wend. (N. Y.) 134.

— (not synonymous with "residence" under bankrupt act). 4 Bankr. Reg. 613.

— (has a more extensive signification than "residence"). 4 Humph. (Tenn.) 346, 348.

— (what constitutes). 3 Wheat. (U. S.) 14; 15 La. Ann. 637, 638; 58 Me. 207, 211; 10 Pick. (Mass.) 77, 98; 99 Mass. 587, 592; 100 *Id.* 167, 170; 15 N. H. 137; 2 Add. 6; 2 Bos. & P. 229 *n.*; 3 Ves. 198, 201; 5 *Id.* 750.

— (what is not a). 2 Pet. Adm. 438, 450.

— (how acquired). 2 Wheat. (U. S.) 77; 13 Me. 225, 228; 21 *Id.* 357, 361; 36 *Id.* 428, 430; 5 Md. 186; 3 Bradf. (N. Y.) 267; 4 *Id.* 127; 4 Cow. (N. Y.) 516; 1 Daly (N. Y.) 534; 16 Johns. (N. Y.) 128, 133; 67 N. Y. 379; 5 Ired. (N. C.) Eq. 190; 1 Binn. (Pa.) 336, 349 *n.*, 351.

— (how ascertained). 1 Metc. (Mass.) 242, 245, 250, 252; 59 Mo. 238; 8 Wheel. Am. C. L. 398; 8 Com. Dig. 525.

— (a question of intention and not of time). 1 Gall. (U. S.) 274, 285; 5 Greenl. (Me.) 396, 399.

— (what is a foreign minister's). 1 Dall. (U. S.) 110, 114.

— (change of). 14 Johns. (N. Y.) 428.

— (a student at college does not change his, by his residence at the college). 7 Mass. 1.

an imperfect domicile,) in one country, thus altogether losing his former domicile in another. The expression "*de facto* domicile," however, is used by French jurists to denote one of two domiciles. "Si l'on pouvoit avoir deux domiciles, ce seroit par rapport à des objets tout différens; ainsi l'un pourroit être un domicile de fait qui influeroit sur tout ce qui regarde directement la personne domiciliée; l'autre un domicile de droit et de volonté, qui décideroit du sort de la succession." Cochin's argument in the case of the Marquis d'Hautefort, *Œuvres*, t. 3, p. 327, cited by Phillim. Dom. 15, *n.* (c). See, also, *Le Sueur v. Le Sueur* (1 P. D. 139), where the expressions "*bond fide* domicile" and "*matrimonial* domicile" are used. What these expressions mean is not clear, but from the reference to *Manning v. Manning* (L. R. 2 P. & D. 223) it would seem that "*domicil*" is used in the sense of "*residence*" (*q. v.*)

DOMICILE, (of insolvent debtor). 20 Johns. (N. Y.) 210, 232.

—— (of minor). 2 Bradf. (N. Y.) 214, 218.

—— (of wife, follows that of husband). 11 Pick. (Mass.) 410, 415.

—— (of wife, when different from that of husband). 29 Ala. 719, 724.

—— (under attachment act). 2 Dutch. (N. J.) 207; 4 *Id.* 516; 5 N. Y. 422.

DOMICILE OF ORIGIN.—*See* DOMICILE, § 4.

DOMICILE OF SUCCESSION, (defined). 7 Fla. 81, 151.

DOMICILIATED, (synonymous with "residing"). 26 La. Ann. 338, 339.

DOMICILIUM.—DOMICILE (*q. v.*)

DOMIGERIUM.—Power over another; also, danger.—*Bract.* l. 4, t. 1, c. x.

DOMINA.—A title given to honorable women, who, anciently, in their own right of inheritance, held a barony.—*Cowell.*

DOMINANT TENEMENT.—

A term used in the civil and Scotch law, and thence in ours, relating to servitudes, meaning the tenement or subject in favor of which the service is constituted; as the tenement over which the servitude extends is called the "servient tenement." *See Bell Dict.*, Servitudes; Gale Easem. (4 edit.) 5, 14. *See, also*, EASEMENT.

DOMINATIO.—Lordship.

DOMINICA IN RAMIS PALMARUM.—Palm Sunday.—*Cowell.*

DOMINICAL.—That which denotes the Lord's day, or Sunday.

DOMINICIDE.—The act of killing one's lord or master.

DOMINICUM.—A lordship; the estate of a lord; the land retained by the lord for his own use; the estate of a free tenant. *See* DEMESNE.

DOMINICUM ANTIQUUM.—Ancient demesne (*q. v.*)

DOMINION.—Ownership; sovereignty. *See* DOMINIUM.

DOMINIUM.—This word is equivalent to ownership (*q. v.*) The term *dominium directum* (or direct dominion), *i. e.* the nominal or bare right of ownership remaining in an owner who has granted the exclusive right of enjoyment and of limited or unlimited disposition over the thing to another person, and *dominium utile* (or beneficial dominion), *i. e.* the practical right of

enjoyment and disposition thus vested in the grantee, were invented by the glossators to express the relation between the *dominus* and *emphyteuta* of the Roman law, which allowed the latter a so-called *utilis in rem actio*, while the *dominus* retained the *rei vindicatio directa*. The terms are also applied to the interests of the lord and the tenant under the feudal system (*q. v.*) (Co. Litt. 1 b; 2 Bl. Com. 1; Hayes Conv. l. 1, 2, 3; Holtz. Encycl. l. 308; Mackeldey, § 296, n. (a)), and to the legal and equitable interests in property recognized by the rules of common law and of equity respectively. *See* ESTATE; INTEREST.

DOMINIUM DIRECTUM.—*See* DOMINIUM.

Dominium non potest esse in pendenti: Lordship cannot be in suspense, *i. e.* property cannot remain in abeyance (*q. v.*)

DOMINIUM UTILE.—*See* DOMINIUM.

DOMINUS.—This word, prefixed to a man's name, in ancient times, usually denoted him a knight or a clergyman, a gentleman or a lord of the manor; also, a principal, in the Roman law.—*Jacob.*

Dominus aliquando non potest alienare: A lord sometimes cannot alienate.

Dominus capitalis loco hæredis habetur, *quoties per defectum vel delictum extinguitur sanguis sui tenentis* (Co. Litt. 18): The supreme lord takes the place of the heir, as often as the blood of his tenant is extinct through deficiency or crime.

DOMINUS LITIS.—Master of the suit. A person who has control over an action or other judicial proceeding, and can dispose of it as he thinks fit. Thus, where one of several actions has been selected as a test action, the plaintiff in that action is nevertheless *dominus litis*, and can allow it to be dismissed, or judgment to go by default. (Robinson v. Chadwick, 7 Ch. D. 878. *See* CONSOLIDATION OF ACTIONS, § 2.) A solicitor or counsel employed by a person to conduct a suit for him is sometimes said to be *dominus litis* for certain purposes, *e. g.* to compromise, withdraw a jury, &c., without the client's instructions, and in some cases, even against them. *See* Strauss v. Francis, L. R. 1 Q. B. 379, and the cases there cited.

DOMINUS NAVIS.—The absolute owner of a ship.

Dominus non maritabit pupillum nisi semel (Co. Litt. 9): A lord cannot give a ward in marriage but once.

Dominus rex nullum habere potest parem multo minus superiorem: The king cannot have an equal, much less a superior.

DOMITÆ NATURÆ.—Tame and domestic animals, as horses, kine, sheep, poultry &c. *See* FERÆ NATURÆ.

DOMO REPARANDA.—A writ that lay for one against his neighbor, by the anticipated fall of whose house he feared a damage and injury to his own.—*Reg. Orig.* 153; *Termes de la Ley*.

DOMUS.—A house or habitation; a home or residence.

DOMUS CAPITULARIS.—A chapter-house.

DOMUS CONVERSCRUM.—An ancient house built or appointed by King Henry III., for such Jews as were converted to the christian faith; but King Edward III., who expelled the Jews from the kingdom, deputed the place for the custody of the rolls and records of the chancery.—*Jacob*.

DOMUS DEI.—The House of God, applied to many hospitals and religious houses.

DOMUS PROCERUM.—The House of Lords, abbreviated into *Dom. Proc.*, or *D. P.*

Domus sua cuique est tutissimum refugium (5 Co. 92): To every one his own house is the safest refuge.

Dona clandestina sunt semper suspiciousa (3 Co. 81): Clandestine gifts are always suspicious.

Donari videtur, quod nullo jure cogente conceditur (D. 50, 17, 82): A thing is said to be given when it is yielded otherwise than by virtue of right.

DONATARIUS.—A donee; one to whom something is given.

DONATIO.—A gift; a donation; one of the modes of acquiring property. There were several species of *donatio*, such as *donatio absoluta et larga*, an absolute gift in fee-simple; *donatio conditionalis*, a conditional gift; *donatio stricta et coarctata*, a gift to some particular heirs exclusive of others.

DONATIO CAUSA MORTIS.—A gift of personal property on a death-bed. It must be made in contemplation of the donor's death, to take effect on his death by his existing illness, and it must be completed by delivery of the thing at the time by the donor, or by his direction, to the donee. Hence things, the property of which does not pass by delivery (such as stock), cannot be the subject of a *donatio causa mortis*. A *donatio causa mortis* resembles a legacy in being subject to legacy duty and to the debts of the deceased. *Wms. Ex.* 725; *Wats. Comp. Eq.* 127; *Ward v. Turner*, 2 Ves. 431; 1 White & T. Lead. Cas. 816; *In re Mead*, 15 Ch. D. 651, (a case of deposit notes and bills of exchange.)

DONATIO CAUSA MORTIS, (defined). 2 Del. Ch. 51, 62; 32 Barb. (N. Y.) 250, 260; 3 Binn. (Pa.) 366, 370; 2 Whart. (Pa.) 17, 22; 4 Wheel. Am. C. L. 551; 2 Bl. Com. 514; 14 Bro. Ch. 286, 293; 2 Ves. 112, 120.

— (what is a). 22 Wend. (N. Y.) 526, 537; 3 Atk. 214; 1 Bli. n. s. 497, 527; 2 Bro. Ch. 612, 613; 4 Id. 72, 76.

— (what is not). 10 Mass. 427, 429; 14 Pick. (Mass.) 198, 204; 1 Murph. (N. C.) 127·9 Ves. 1, 4.

— (what is necessary to constitute a). 1 Chit. Gen. Pr. 104; 2 Esp. 663; 1 Holt 10, 352, 355; 3 Madd. 184; 5 Id. 351, 355; 1 P. Wms. 405, 441, 443; 3 Id. 357, 358; 2 Ves. Sr. 431, 442.

— (distinction between, and "gift"). 2 Barn. & Ald. 551.

— (no distinction between, and any other parol gift). 1 Nott. & M. (S. C.) 237, 239.

— (distinction between, and "nuncupative will"). 1 Sim. & S. 239, 244.

— (what is a valid). 5 Gill & J. (Md.) 54; 1 Cow. (N. Y.) 598.

— (mortgage or bond cannot be made subject of). 1 Sim. & S. 239, 246.

— (promissory note not good as). 5 Barn. & C. 501, 503.

— (who competent witness to prove). 8 Wheel. Am. C. L. 449.

DONATIO INTER VIVOS.—A gift between living persons; an ordinary gift from one person to another. The words *inter vivos* are used to distinguish this from the *donatio causa mortis*.

Donatio non præsumitur: A gift is not presumed.

Donatio perficitur possessione accipientis (Jenk. Cent. 109): A gift is perfected by possession of the receiver.

Donatio principis intelligitur sine præjudicio tertii (Davis 75b): A gift of the prince is understood, without prejudice to a third party.

DONATIO PROPTER NUPTIAS.—A gift on account of marriage. Among the Romans it was originally a gift from the husband to the intended wife made as security for her marriage portion, and called *donatio ante nuptias*; but afterwards it became usual to make such gifts as well after as before marriage, whereupon the name was changed to *donatio propter nuptias*.

DONATION.—See DONATIVE ADVOWSON.

DONATION, (defined). 21 Wis. 636, 642.

— (what is a). 2 Cinc. (O.) 353.

— (in a statute). 56 Ind. 476.

Donationum alia perfecta, alia incepta et non perfecta; ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsecuta (Co. Litt. 56): Some gifts are perfect, others incipient or not

perfect; as if a gift were read and agreed to, but delivery had not then followed.

DONATIVE ADVOWSON.—An advowson or spiritual preferment, be it church, chapel or vicarage, which is in the free gift of the patron by mere deed of gift or donation, without any presentation, institution or induction (*q. v.*) It seems that only advowsons created by the crown itself, or by a subject under express license of the crown, exempting them from the necessity of presentation and visitation by the bishop, are properly called "donative." Co. Litt. 344a; Phillim. Ecc. L. 318; 2 Bl. Com. 23. See ADVOWSON.

DONATOR.—A donor; one who makes a gift (*donatio*).

Donator nunquam desinit possidere antequam donatarius incipiat possidere (Dyer 281): He who gives never ceases to possess before that the receiver begins to possess.

DONATORY.—The person on whom the king bestows his right to any forfeiture that has fallen to the crown.

DONE OR ACTED, (in a statute). 16 East 216.

DONE, HAVING SO, (in a charter-party). 3 Mau. & Sel. 308, 321.

DONE VERY WELL FOR HER BEFORE, (in a will). 3 Atk. 65, 69.

DONEE—DONOR.—In the most general sense of the words, a donor is a person who gives property, and the donee is the person to whom it is given, as in the case of a *donatio causa mortis* (*q. v.*) In their technical sense, "where a man giveth certaine lands or tenements to another in taile, he which maketh the gift is called the 'donor,' and he to whom the gift is made is called the 'donee.'" Litt. § 57; Shep. Touch. 228. See GIFT.

DONIS CONDITIONALIBUS, STATUTE DE.—This is the statute (13 Ed. I. c. 1, A. D. 1226), otherwise called "Westminster the Second." At the date of this statute a gift to a man and the heirs of his body, provided that if he had no heirs the lands should revert, was construed to give the donee a conditional fee, which enabled him, after issue begotten, to alien the land, and thereby to disinherit the issue, and to deprive the donor of his right of reverter. This interpretation is declared by this statute to be "contrary to the minds of the givers, and the form expressed in the gift," wherefore it is ordained that the "will of the giver, according to the form in the deed of gift manifestly expressed, be henceforth observed; so that they to whom the land is given under such condition shall have no power to alien the land so given, but that it shall remain unto the issue of them to whom it is given after their death, or shall revert to the giver or

his heirs if issue fail, or there is no issue at all. And if a fine be levied hereafter upon lands so given, it shall be void in law." The intolerable mischief introduced by this statute was got rid of by the fictitious proceedings of common recoveries, which were abolished by 3 and 4 Will. IV. c. 74.—*Wharton*.

DONOR.—A giver; a bestower; one who gives lands to another in tail, &c. See DONEE.

DONUM.—In the civil law, a gift; a free gift.

DOOM.—Judicial sentence; judgment. A word much used in references to arbitrators.—*Termes de la Ley*.

DOOMING, (what is). 3 Mass. 429, 433.

DOOMSDAY-BOOK.—See DOMESDAY-BOOK.

DOORS OF ALL THE CHURCHES, (in statute, means principal door of each church). Wilberf. Stat. L. 129.

DORMANT.—Sleeping; inactive; in abeyance; unknown.

DORMANT CLAIM.—A claim in abeyance.

DORMANT EXECUTION.—One which is delivered to the sheriff with directions to levy only, and not to sell until further orders, or until a junior execution is received.

DORMANT JUDGMENT.—One upon which no execution is issued until the time limited for issuing execution, as of course, has run out.

DORMANT PARTNER.—See PARTNERSHIP.

DORMANT PARTNER, (defined). 30 N. Y. 374; 47 *Id.* 15, 19.

— (need not be named in writ). 2 Harr. & G. (Md.) 159.

DORTURE.—A dormitory of a convent; a place to sleep in.

DOS.—

§ 1. **In the Roman law.**—The property contributed by the wife or her relations upon or in respect of the marriage, and is opposed to the *donatio propter nuptias* of the husband. It was called *profectitia* when made by the wife's father or other male ascendant; *adventitia* when made by the wife or wife's mother or other female ascendant; and *receptitia* when made by a stranger. The husband had the management and enjoyment of it during the coverture, but (in the later law) could neither sell nor mortgage it, and had to restore it upon the determi-

nation of the coverture to the source from which it came.—*Brown*.

§ 2. In old English law.—The portion given to the wife by the husband at the church door, in consideration of the marriage; dower; the wife's portion out of her deceased husband's estate in case he had not endowed her.

Dos de dote peti non debet (4 Co. 122): Dower from dower ought not to be sought.

DOS RATIONABILIS.—Reasonable dower; dower at common law. 2 Bl. Com. 134.

Dos rationabilis vel legitima est cujuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominio suo ut de feodo, &c. (Co. Litt. 336): Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, &c.

Dormiunt aliquando leges, nunquam moriuntur (2 Inst. 161): The laws sometimes sleep, never die.

DOT.—A civil law term adopted in Louisiana, equivalent in meaning to the *dos* of the Romans. See *Dos*, § 1.

DOTAGE, (defined). 17 Am. Dec. 311.

DOTAL.—Relating to the marriage portion of a woman; constituting her portion; comprised in her portion.—*Wharton*.

DOTATION.—The act of giving a dowry or portion; endowment in general, including the endowment of a hospital or other charitable institution.

NOTE.—A Spanish law term equivalent in meaning to the French *dot* (*q. v.*) and the Roman *dos* (*q. v.*)

NOTE, (defined). 7 Ind. 440.

NOTE ASSIGNANDA.—A writ that lay for a widow, where it was found by office that the king's tenant was seised of lands in fee, or fee-tail, at his death, and that he held of the king in chief, &c.—*F. N. B.* 26; *Reg. Orig.* 297.

NOTE UNDE NIHIL HABET.—A writ of dower that lies for the widow, against the tenant of lands whereof he was solely seised in fee-simple, or fee-tail, and of which she is dowerable.—*F. N. B.* 147.

DOTH BARGAIN AND SELL, (in an agreement). 4 T. B. Monr. (Ky.) 462, 463.

DOTH LET, (in a lease). Cro. Eliz. 486.

Doti lex favet; præmium pudoris est, ideo parcat (Co. Litt. 31): The law favors dower; it is the reward of chastity, therefore let it be preserved.

DOTIS ADMINISTRATIO.—Admeasurement of dower, where the widow holds more than her share, &c.

DOTISSA.—A dowager.

DOUBLE AVAIL OF MARRIAGE.—In Scotch law, the double of the value of the vassal's wife's tocher, formerly due to the superior, when the vassal refused a wife equal to him and offered by the superior; but this was modified to three years' rent of the vassal's free estate.

DOUBLE BOND.—A Scotch law term for a bond containing a penalty, as distinguished from a single bond.

DOUBLE COMPLAINT, or DOUBLE QUARREL.—A grievance made known by a clerk or other person, to the archbishop of the province, against the ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, institute a clerk, &c. It is termed a double complaint, because it is most commonly made against both the judge and him at whose suit justice is denied or delayed; the effect whereof is, that the archbishop taking notice of the delay, directs his letters, under his authentic seal, to all clerks of his province, commanding them to admonish the ordinary, within a certain number of days, to do the justice required, or otherwise to appear before him or his official, and there allege the cause of his delay; and to signify to the ordinary that if he neither perform the thing enjoined, nor appear nor show cause against it, he himself, in his court of audience, will forthwith proceed to do the justice that is due.—*Cowell*.

DOUBLE, or TREBLE COSTS.—The true mode of estimating the amount of double costs was, first to allow the successful party the single costs, including the expenses of witnesses, counsel's fees, &c., and then allow him one-half of the amount of the single costs, without deducting counsel's fees, &c. Treble costs consisted of the single costs, half the single costs, and half of that half. But the law as to these costs was repealed in England by the 5 and 6 Vict. c. 97, which enacted that the successful party should be entitled only to full and reasonable costs, to be taxed by the proper officer, which taxation should, as in ordinary cases, be subject to review. Double and treble costs are still allowed, under certain special circumstances, in a few of the States.

DOUBLE COSTS, (what are). 9 Wend. (N. Y.) 443.

— (rule as to calculating). Penn. (N. J.) 110; 6 Wend. (N. Y.) 297, 321; 4 Barn. & C. 889; 1 Chit. 137 n.; 7 Dowl. & Ry. 484.

— (in a statute). 3 Nev. & M. 572.

DOUBLE DAMAGES — DOUBLE RENT — DOUBLE VALUE.—Double and treble damages are in some cases given by particular statutes. The most important instances in English law are: (1) Where a person has distrained for rent although no rent was owing,

and the distress has been sold, the owner may recover double the value of the goods distrained, (Stat. 2 Will. & Mary (sess. 1) c. 5; Woodf. Land. & T. 488; Archb. Pr. 408;) (2) where a person is guilty of pound-breach or rescue of goods distrained for rent, the person grieved shall recover treble damages, (Stat. 2 Will. & Mary (sess. 1) c. 5; Woodf. Land. & T. 443;) (3) where a tenant of land holds over (*i. e.* retains possession of the land) after the determination of his tenancy (*see* HOLDING OVER); (4) in some cases where the revenue has been defrauded by non-payment of customs, excise, or other duties, the person offending is liable to pay double or treble duty, or double or treble the value of the property. *See* SMUGGLING.

DOUBLE DAMAGES, (how measured). 1 Gall. (U. S.) 28, 29; 13 Price 476.
 — (in a statute, how assessed). 4 Wheel. Am. C. L. 118.

DOUBLE EAGLE.—A gold coin of the United States of the value of twenty dollars.

DOUBLE ENTRY.—A term used among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every transaction. It is used in contradistinction to single entry.

DOUBLE FINE.—In old English law, a fine *sur done grant et render* was called a "double fine," because it comprehended the fine *sur cognizance de droit come ceo, &c.*, and the fine *sur concessit*. (2 Bl. Com. 353.)—*Burrill*.

DOUBLE INSURANCE.—

§ 1. The insurance of the same subject-matter or interest therein twice, or repeatedly in favor of the same person, against the same risk, the aggregate of such insurances exceeding the value of the interest or property insured. It differs from re-insurance, which is an insurance for the indemnity of the original underwriter.

§ 2. In English law, where a person, being fully insured by one policy, effects another on the same subject with other insurers, he may recover the amount of his actual loss against either set of insurers. But as insurance is a contract of indemnity only, the law will not allow him to recover beyond that amount; and if he obtain full satisfaction upon either of his policies, the underwriters upon this are entitled to contribution from the underwriters upon the other. If the policies are of the same date, all the underwriters on the several policies are equally bound to return to the assured the premiums paid by him for the sum insured above the value of the subject-matter of insurance in proportion to their subscription, but if of different dates, and the amount insured in the first set of policies is not equal to the value of the subject-

matter, the underwriters on the last set of policies are alone liable for a return of the premium. 1 Arn. Ins. (4 edit.) 309 *et seq.*

DOUBLE PLEADING.—The old rule was that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported, and none of the subsequent pleadings was to contain several distinct answers to that which preceded it; and the reason of the rule in each case was, that such pleading tended to several issues in respect of a single claim. But this rule of the common law has been modified both in England and America. *See* DUPLICITY; PLEADING.

DOUBLE VOUCHER.—This was when a common recovery was had, and an estate of freehold was first conveyed to any indifferent person against whom the *procipe* was brought, and then he vouched the tenant-in-tail, who vouched over the common vouchee. For if a recovery were had immediately against a tenant-in-tail, it barred only the estate in the premises of which he was then actually seized, whereas, if the recovery were had against another person, and the tenant-in-tail were vouchee, it barred every latent right and interest which he might have in the lands recovered. 2 Bl. Com. 359.

DOUBLE WASTE.—When a tenant, who was bound to repair, suffered a house to be wasted, and then unlawfully felled timber to repair it, he was said to commit double waste. Co. Litt. 53.

DOUBLES.—Letters-patent.—*Cowell*.

DOUBT.—Uncertainty of opinion as to a fact, proposition, or other thing. *See* REASONABLE DOUBT.

DOUBTING NOT, (in a will). Amb. 520; 1 Bro. Ch. 179; 2 Com. Dig. 769; 8 Id. 998; 18 Ves. 476, 478.

DOW.—To give; to endow.—*Cowell*.

DOWABLE.—Entitled to dower.

DOWAGER.—A widow who is endowed, or who has a jointure in lieu of dower, is thus described; but in common practice the word is confined to the widows of princes, dukes, and other like persons only.

DOWAGER-QUEEN.—The widow of the king of England. As such she enjoys most of the privileges belonging to her as queen-consort. It is not treason to conspire her death or violate her chastity, because the succession to the crown is not thereby endangered. No man

however, can marry her without a special license from the sovereign, on pain of forfeiting his lands or goods. 1 Bl. Com. 233.

DOWER.—**NORMAN-FRENCH:** *doweyre*, *dow-arrie*; from Low Latin *dotarium*; from Latin *dotare*, to endow; from *dos*, a marriage portion.

"That portion of lands or tenements which the wife hath for terme of her life of the lands or tenements of her husband after his decease, for the sustenance of herself and the nurture and education of her children." (Co. Litt. 30b.) Dower was formerly of five kinds—

§ 2. **By common law.**—At the common law (with which, as respects this subject, the various statutes in the United States still substantially conform), where a man was seised in deed or in law of land for an estate of inheritance, otherwise than as joint tenant (Litt. § 45), and died leaving a widow, she was entitled to hold the third part of such lands and tenements as were her husband's at any time during the coverture, as tenant in dower for the term of her life (*Id.* § 36), and this notwithstanding that the husband might have sold, mortgaged or devised the lands, or part of them, unless, in the case of a conveyance, the wife joined to release her dower, or unless she had barred her right of dower by accepting a jointure (*q. v.*) in lieu of it. To prevent this inconvenience several methods were adopted in England to enable a person acquiring lands to alien them at a future time without his wife's concurrence. (Wms. Real Prop. 225.) The most important of these methods was that of inserting "uses to bar dower" in the conveyance to the original purchaser. See **USES TO BAR DOWER.**

§ 3. **English Dower Act.**—But no such precaution is required in a conveyance to a man married in England since the 1st January, 1834, for, by the Dower Act (Stat. 3 and 4 Will. IV. c. 105; Shelf. R. P. Stat. 417), no woman married since that day is entitled to dower out of any land which has been absolutely disposed of by her husband in his life-time, or by his will; and her right to dower is subject to all partial estates and interests created by him, and all debts, charges, encumbrances, &c., to which his lands are liable. A husband may also wholly or partially deprive his wife of her dower by making a declaration to that effect by deed or will. So that now a woman can only claim dower as against her husband's heir-at-law, and

she cannot even do that if her husband has executed a declaration to the contrary. Wms. Real Prop. 236; Wats. Comp. Eq. 349.

§ 4. On the other hand, the act has granted widows a right of dower out of lands to which the husband had a mere right, without having had actual or legal seisin, and has extended the right of dower to equitable as well as legal estates in possession. Wms. Real Prop. 236.

§ 5. **Action of dower.**—An action by a widow to enforce her right to dower is brought in the Common Pleas Division, or in the Chancery Division of the High Court of Justice,* by writ of summons in the ordinary form indorsed with a claim for dower (Judicature Act, 1875, Forms A. II. iv.), and the judgment is executed by the sheriff assigning and delivering a third part of the lands to the widow. Co. Litt. 34b; Reg. Brev. 297, *De dote assignanda*.

§ 6. **By custom.**—By the custom of some places a widow has the half, or a quarter, or the whole of her husband's lands, with or without special incidents. Thus, in gavelkind lands, the widow has the half for her dower so long as she remains unmarried and without child. Litt. § 37; Co. Litt. 33b.

The three following kinds of dower no longer exist—

§ 7. **Ad ostium ecclesiæ.**—Dower *ad ostium ecclesiæ*, or dower at the church door, "is where a man of full age seised in fee-simple, who shall be married to a woman, and when he cometh to the church doore to be married, there, after affiance and troth plighted betwene them, he endoweth the woman of his whole land, or of the halfe, or other lesser part thereof, and there openly doth declare the quantity and the certainty of the land which she shall have for her dower. In this case the wife, after the death of her husband, may enter into the said quantity of land of which her husband endowed her without other assignment." Litt. § 39. Abolished by Stat. 3 and 4 Will. IV. c. 105, § 13.

§ 8. **Ex assensu patris.**—Dower *ex assensu patris*, or dower by assent of the father, "is where the father is seised of tenements in fee, and his sonne and heire apparent, when he is married, endoweth his wife at the monastery or church doore, of parcel of his father's lands or tenements with the assent of his father, and assignes [*i. e.* fixes] the quantity and parcels. In this case, after the death of the son, the wife shall enter into the same parcell without the assignment of any." Litt. § 40. Abolished by Stat. 3 and 4 Will. IV. c. 105, § 13.

§ 9. **De la plus beale.**—Dower *de la plus beale* is "where a man is seised of forty acres of land, and he holdeth twenty acres of the said forty acres of one [lord] by knights service, and the other twenty acres of another in socage, and taketh wife, and hath issue a sonne, and dieth, his sonne being within the age of fourteene yeares, and the lord of whom the land is holden by knights service entreth into the

* Com. L. P. Act, 1860, § 26; Judicature Act, 1873, § 34; Williams 238. As to the old kinds of "writs of dower *unde nihil habet*," and "writ

of right of dower," abolished by the former act, see 3 Bl. Com. 182.

twenty acres holden of him, and holdeth them as gardein in chivalrie during the nonage of the infant, and the mother of the infant entreth into the residue, and occupieth it as gardein in socage; if in this case the wife bringeth a writ of dower against the gardein in chivalry, to be endowed of the tenements holden by knights service, . . . the gardein in chivalry may pleade in such case all this matter, and shew how the wife is gardein in socage as aforesaid, and pray that it may be adjudged by the court that the wife may endow her selfe *de la plus beale*, i. e. of the most faire of the tenements which she hath as gardein in socage, after the value of the third part which she claimes by her writ of dower to have of ("De les tenements" in the original. Coke's translation omits the "of.") the tenements holden by knights service." (Litt. § 48.) "And note that after such a judgment given, the wife may take her neighbours and in their presence endow herself by metes and bounds of the fairest part of the tenements which she hath as gardein in socage, to have and to hold to her for terme of her life; and this dower is called *dower de la plus beale*." *Id.* § 49. This kind of dower was necessarily abolished with the military tenures by Stat. 12 Car. II.; 2 Bl. Com. 132. See ASSIGNMENT, § 5; CURTESY; ESTATE; FREE-BENCH; METES AND BOUNDS.

DOWER, (defined). 61 Me. 374, 377.

—— (inchoate right of). 25 Minn. 462.

—— (how assigned). 2 Hill (N. Y.) 547.

—— (in a deed). 15 Mass. 26, 29.

—— (in a statute). 36 Iowa 24, 31.

—— (in a will). 36 Me. 211, 216; 1 Halst.

(N. J.) Ch. 353.

—— (widow entitled to, when). 24 Wend.

(N. Y.) 193, 197.

—— (widow not entitled to, when). 15 Pet. (U. S.) 21, 37; 2 Sch. & L. 444, 454; 2 Vern. 365.

DOWER AD OSTIUM ECCLESIAE.—See DOWER, § 7.

DOWER BY CUSTOM.—See DOWER, § 6.

DOWER BY THE COMMON LAW.—See DOWER, § 2.

DOWER DE LA PLUS BEALE.—See DOWER, § 9.

DOWER EX ASSENSU PATRIS.—See DOWER, § 8.

DOWER IN MORTGAGED PREMISES, (under New Jersey statutes). South. (N. J.) 264, 273; 2 Halst. (N. J.) 392.

DOWER, WRIT OF, (how served). South. (N. J.) 374.

—— (how far amendable). 1 Halst. (N. J.) 166.

DOWLE STONES.—Stones dividing lands, &c.—*Cowell*.

DOWMENT.—In old English law, endowment; dower.

DOWN THE CREEK ON BOTH SIDES FOR QUANTITY, (in the description of land). 7 Pet. (U. S.) 218.

DOWRESS.—A widow entitled to dower; a tenant in dower.

DOWRY.—This is the proper name for the property which the wife brings to her husband upon her marriage with him, and, like the *dos* of Roman law is distinguished from the dower (or jointure in lieu thereof), which corresponds to the *donatio propter nuptias* of Roman law. The wife's dowry is often called her *maritagium* in the old statutes.—*Brown*.

DOWRY, (defined). 6 Rob. (La.) 111, 113; 10 *Id.* 74, 78; 6 La. Ann. 786, 787.

DRACO REGIS.—The standard, ensign, or military colors borne in war by the ancient kings of England, having the figure of a dragon painted thereon.

DRACONIAN LAWS.—A code of laws prepared by Draco, the celebrated lawgiver of Athens. These laws were exceedingly severe, and the term is now sometimes applied to any laws of unusual harshness.

DRAFT.—

§ 1. A draft is an order for the payment of money drawn by one person on (*i. e.* directed to) another. Checks and bills of exchange (*q. v.*) belong to the genus of drafts. In its technical sense a draft is an order drawn by one banker on another, but otherwise resembling an ordinary check.

§ 2. Draft also signifies a document drawn up or framed for the purpose of discussion or consideration, *e. g.* a draft agreement, will, lease, conveyance, statement of claim, affidavit, &c. When the document is engrossed or copied for execution or signature the draft from which the engrossment or copy is made is the original draft. See ENGROSS.

DRAFT, (defined). 1 Story (U. S.) 22, 30.

—— (what is not). 6 Daly (N. Y.) 484.

DRAFTS, (in by-laws of bank). 69 N. Y. 314, 317.

DRAFTSMAN.—Any one who draws or frames a legal document, *e. g.* a will, conveyance, pleading, &c. (See CONVEYANCER; DRAW.) Under the old English practice in chancery, all bills, answers, &c., had to be signed, and were almost invariably drawn, by counsel. A barrister whose practice included the drafting of

chancery pleadings was called an "equity draftsman," the correlative term at common law being "special pleader" (*q. v.*)

DRAIN—DRAINAGE.—

§ 1. In American law.—To drain is to lead or conduct water from one piece of land to another for the purpose of drying the former. The right to construct drains through the land of another is an easement which may be acquired by grant or prescription.

§ 2. In English law.—Under the Sanitary and Public Health Acts, drain means an underground channel or passage for carrying off water, soil, &c., from one building or premises within the same curtilage, into a cesspool or sewer (*q. v.*) Sanitary authorities have power to compel the effectual drainage of houses within their respective districts. Public Health Act, 1875; Metropolis Management Acts. See SANITARY AUTHORITIES.

§ 3. The drainage of land, *i. e.* the construction of works for taking off superfluous water from land for the purpose of improving it (as opposed to the drainage of houses, which is of a sanitary nature), is one of the works for which limited owners are empowered to borrow or advance money and charge it on the land with the sanction of the Enclosure Commissioners. See IMPROVEMENT OF LAND ACTS.

§ 4. The Enclosure Commissioners are also empowered to enable land-owners to obtain advances from the treasury for the improvement of land by drainage (Stats. 9 and 10 Vict. c. 101; 10 and 11 Vict. c. 11; 11 and 12 Vict. c. 119; 13 and 14 Vict. c. 31; 19 and 20 Vict. c. 9), and to authorize land-owners to execute works required for the drainage of their land on land belonging to other persons, on making compensation to such persons for damage thereby occasioned. Stat. 10 and 11 Vict. c. 38.

§ 5. Under the Settled Estates Act, 1877, the High Court may direct any part of a settled estate to be laid out for drains, and the expenses to be raised by sale, mortgage or charge of the estate. §§ 20, 21.

DRAIN, (defined). 5 Gray (Mass.) 61, 64.

DRAINS, TRENCHES AND WATER-COURSES, (in a statute). 1 Ex. D. 419, 422.

DRAMATIC COMPOSITION, (what is not, under copyright statute). 1 Abb. (U. S.) 356.

DRAMATIC COPYRIGHT.—

See COPYRIGHT, § 3; RIGHT OF REPRESENTATION AND PERFORMANCE.

DRAM-SHOP.—A drinking saloon, where liquors are sold to be drunk on the premises.

DRAW—DRAWEE—DRAWER.—

—To draw a bill of exchange is to write (or cause it to be written) and sign it; and

hence to draw on a person is to draw a bill of exchange for his acceptance. The person who draws it is called the drawer and the person to whom it is directed or addressed, the drawee. See BILL OF EXCHANGE; DRAFT; DRAFTSMAN.

DRAW BILLS, (power to). 4 Carr. & P. 121, 123; 2 Cox Ch. 84; Moo. & M. 450, 452.

DRAWBACK.—

§ 1. A term used in commerce to signify the remitting or paying back upon the re-exportation of a commodity, of the duties previously paid on it when imported.

§ 2. A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold for less than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Were it not for the system of drawbacks it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was more heavily taxed at home than abroad. But the drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign market on the same terms as those fetched from countries where they are not taxed. Many imported foreign articles may be warehoused for subsequent exportation. In this case they pay no duties on being imported, and, of course, get no drawback on their subsequent exportation. Sometimes a drawback exceeds the duty or duties laid on the article; and, in such cases, the excess forms a real bounty of that amount, and should be so considered.

DRAWEE—DRAWER.—See DRAW.

DRAWER, A GOOD, (in a warranty of a horse). 2 Dowl. & Ry. 10.

DRAWING.—Every application for a patent for an invention, or a design, must be accompanied by a drawing illustrating the invention, provided the thing invented is capable of being so illustrated. See PATENT.

DRAWING MORE THAN FIVE FEET OF WATER, (in a statute). Wilberf. Stat. L. 259.

DRAWLATCHES.—Thieves, robbers, wasters, and roberdsmen. 5 Edw. III. c. 14; 7 Rich. II. c. 5.

DREDGING, (in a contract). 124 Mass. 197, 202.

DREIT-DREIT.—Words signifying formerly a double right, *viz.*, of possession, and of

property or interest. (Bract. 4, c. 27; Co. Litt. 266.)—*Jacob.* See DROIT-DROIT.

DRENCHES, or DRENGES.—Tenants *in capite*. They are said to be such as, at the coming of William the Conqueror, being put out of their estates, were afterwards restored to them, on their making it appear that they were the true owners thereof, and neither *in auxilio* or *consilio* against him.—*Spel. Gloss.*

DRENGAGE.—The tenure by which the drenches, or drenges, held their lands.

DRIFT.—In old English law, a driving, especially of cattle.

DRIFTLAND, DROFLAND, or DRYFLAND.—A Saxon word, signifying a tribute or yearly payment made by some tenants to the king, or their landlords, for driving their cattle through a manor to fairs or markets.—*Cowell.*

DRIFTS OF THE FOREST.—A view or examination of what cattle are in a forest, chase, &c., that it may be known whether it be surcharged or not; and whose the beasts are, and whether they are commonable. These drifts are made at certain times in the year by the officers of the forest; when all cattle are driven into some pound or place enclosed, for the before-mentioned purposes, and also to discover whether any cattle of strangers be there, which ought not to common. Manw. pt. 2, c. xv.

DRIFTWAY.—A road or way used for driving cattle. This term seems to be still in use in Rhode Island. 2 Hilliard Real Prop. 33.

DRIFTWAY, (a carriage-way does not imply a). 1 Taunt. 279, 285.

DRINCELEAN, or DRINKLEAN.—A contribution from tenants in the time of the Saxons towards a potation of ale, provided to entertain the lord or his steward.—*Jacob.*

DRIP.—A species of easement or servitude obligating one man to permit the water falling from another man's house to fall upon his own land. 3 Kent. Com. 436.

DRIVER, (in a statute). 3 East 504.

DROFDEN, or DROFDENNE.—A grove or woody place where cattle were kept.—*Jacob.*

DROIT—DROITURAL.—"Droit" is Norman-French for "right" (Latin, *directum*). In the old books it signifies especially a right to land. Thus, if a tenant in fee-simple was disseised of his land, his estate was said to be turned to a right, or a bare or naked right, meaning a right of ownership; the disseisor thereby acquired a mere possession (only good as against strangers), while the disseisee retained, in addition to his right of ownership, the right of pos-

session as against the disseisor, which he could exercise either by entry or possessory action. If, however, the disseisee neglected to pursue his remedy within the time limited by law, or if he failed in a possessory action, the disseisor gained the right of possession as against him, so that the disseisee could only exercise his right of ownership by bringing a writ of right or droitural action. When a person had the actual possession, the right of possession, and the right of ownership, all at the same time, he was said to have *droit-droit*, or *jus duplicatum*. (2 Bl. Com. 195; 3 *Id.* 190; Co. Litt. 158 b, 266 a, 345 a. There is some inconsistency between the statements in the old books on the subject.) These distinctions were abolished when real actions were done away with. See ACTION, § 15; DESCENT CAST; RIGHT; RIGHT OF ENTRY.

DROIT D'ACCESSION.—In the French law, property acquired by accession (*q. v.*)

DROIT D'AUBAINE.—In old European law, a right of the king, entitling him, at the death of an alien, to all such alien was worth, unless he had a peculiar exemption.—*Spel. Gloss.*

DROIT-CLOSE.—An ancient writ, directed to the lord of ancient demesne on behalf of those of his tenants who held their lands and tenements by charter in fee-simple, in fee-tail, for life, or in dower.—*F. N. B.* 23.

DROIT-DROIT, or JUS DUPLICATION.—A double right, *i. e.* the right of possession joined with the right of property, which makes a complete title to lands, tenements and hereditaments. And when to this double right the actual possession is also united, when there is, according to the expression in Fleta, *juris et seisinæ conjunctio*, then, and then only, is the title to property completely legal. 2 Bl. Com. 199.

Droit ne done plus que soit demanda (2 Inst. 286): Justice gives no more than is demanded.

Droit ne poit pas morier (Jenk. Cent. 100): Right cannot die.

DROITS CIVILS.—In the French law, this phrase denotes private rights, the exercise of which is independent of the status (*qualité*) of citizen. Foreigners enjoy them, and the extent of that enjoyment is determined by the principle of reciprocity. Conversely, foreigners, although not residents in France, may be sued on contracts made by them in France.—*Brown.*

DROITS OF ADMIRALTY.—Certain perquisites which originally belonged to the lord high admiral for the time being by virtue of his office, or, during a vacancy of the office, to the crown. The most important droit seems to have been property captured from an enemy during war, either by the army or navy, or by a subject of the crown acting without com-

mission. (2 Steph. Com. 494. See **LETTERS OF MARQUE**.) It has, however, long been usual to grant captured property to the captors. In America, the term is applied to goods found derelict at sea (2 Kent Com. 357 *n.*), and to property captured by non-commissioned vessels. (1 *Id.* 96. See **CAPTURE**.) Under the present arrangement of the public revenue and civil list, in England, all casual revenues arising from any droits of admiralty or droits of the crown are carried to the consolidated fund. Stat. 1 and 2 Vict. c. 2, § 2. See **CIVIL LIST**.

DROITURAL.—Relating to right.

DROITURAL ACTION.—See **DROIT**.

DROMONES—DROMOS—DROMUNDA.—These were at first high ships of great burden, but afterwards those which we now call "men-of-war."—*Jacob*.

DROP.—When the members of a court in England are equally divided on the argument showing cause against a rule *nisi*, no order is made. *i. e.* the rule is neither discharged nor made absolute, and the rule is said to drop. In practice, there being a right to appeal, it has been usual to make an order in one way, the junior judge withdrawing his judgment.

DROP-FEED, (defined). 110 Mass. 70, 86.

DROP-LETTER.—A letter addressed for delivery in the same city or district in which it is posted.

DROVE, CONDUCTED AND MANAGED, (in a declaration). 1 Carr. & P. 251.

DROVE-ROAD.—A road or way for driving cattle.

DROVER, (defined). 11 East 274, 279.
— (in a statute, who is a). Willes 588.

DRU.—A thicket or wood.—*Domesd.*

DRUGGIST, (defined). 28 La. Ann. 765, 767; 120 Mass. 41, 42.

DRUGS AND MEDICINES, (in a policy of insurance). 79 N. C. 279.

DRUNGARIUS.—The commander of a *drungus*, *i. e.* a small band of soldiers; also, a naval commander.—*Spel. Gloss.*

DRUNKARD, (defined). 5 Gray (Mass.) 85, 88.
DRUNKARD, COMMON, (who is a). 5 Gray (Mass.) 85, 86.
— (in a statute). 11 Cush. (Mass.) 477, 479.

DRUNKENNESS.—Disorder of the mind occasioned by the recent use of intoxicating liquor.

§ 1. **Civil responsibility.**—Where a person at the time he enters into a contract is by reason of drunkenness incapable of understanding its terms, the contract is voidable at his option, provided his condition was known to the other party at the time. Chit. Cont. 136; Poll. Cont. 78.

§ 2. **In criminal law**, the wholesome theory of the old writers was, that as a drunkard is *voluntarius dæmon*, "he hath no privilege thereby, but what hurt or ill he doth his drunkenness doth aggravate it." (Co. Litt. 247 *a.*) The modern principle, however, is, that if the existence of a specific intention is essential to make an act a crime, the fact that the offender was drunk when he did it should be taken into account by the jury in deciding whether he had that intention. Steph. Cr. Dig. 17. See **DELIRIUM TREMENS**.

§ 3. **Habitual drunkards.**—Under the English Habitual Drunkards Act, 1879, and under the statutes of several of the States as well, asylums for the reception of habitual drunkards are established, and any habitual drunkard may, on his own application or on that of his friends, and on complying with certain formalities, be admitted into an asylum for a time mentioned in the application.

DRUNKENNESS, (defined). 123 Mass. 436, 437.
— (how proved). 4 Wend. (N. Y.) 113, 123.

— (avoids a bond when). 2 Wheel. Am. C. L. 384.

— (as affecting contracts). 1 Gr. (N. J.) 233; Sax. (N. J.) 320, 346; 3 Cow. (N. Y.) 445; 2 Paige (N. Y.) 31, 422; 3 Hayw. (N. C.) 80, 82; 3 Wheel. Am. C. L. 413; 18 Ves. 12, 16.
— (when avoids a deed). 4 Hayw. (N. C.) 78, 80.

— (when not sufficient to avoid a deed). 3 P. Wms. 131 *n.* (a).

— (when sufficient to avoid a lease). 1 Ves. & B. 194, 199.

— (when a defence to action on note). South. (N. J.) 361.

DRY - CRAFT.—Witchcraft; magic.—*Anc. Inst. Eng.*

DRY EXCHANGE.—A term invented in former times for the disguising and covering of usury, in which something was intended to pass on both sides, whereas nothing passed but on one side, in which respect it was called "dry;" punished by 3 Hen. VII. c. 5.—*Cowell*.

DRY-MULTURES.—In the Scotch law, corn paid to the owner of a mill, whether the payers grind or not.—*Wharton*.

DRY-RENT.—A rent reserved without clause of distress.

DUARCHY.—A form of government where two reign jointly.

Duas uxores eodem tempore habere non licet (Inst. 1, 10, 6): It is not permitted to have two wives at the same time.

DUBITANTE.—Doubting. A word frequently found affixed to the name of a judge in the reports, to indicate that he was in doubt respecting the correctness of the decision rendered.

DUBITATUR.—It is doubted. A word frequently used in the reports, especially the older ones, to signify that a point is doubted.

DUCES TECUM.—See SUBPCENA.

DUCES TECUM LICIT LANGUIDUS.—A writ directed to the sheriff upon a return that he cannot bring his prisoner without danger of death, he being *aded languidus*; whereupon the court grants a *habeas corpus* in the nature of a *duces tecum licit languidus*. But this has long since been out of use; and where the person's life would be endangered by removal, the law will not permit it to be done.—*Wharton*.

DUCHY OF LANCASTER.—Those lands which formerly belonged to the dukes of Lancaster, and now belong to the crown in right of the duchy. The duchy is distinct from the county palatine of Lancaster, and includes not only the county, but, also, much territory at a distance from it, especially the Savoy in London and some land near Westminster. (3 Bl. Com. 78.) There are numerous local acts relating to the duchy, as to which see the Index to the Statutes, published by the Statute Law Revision Commissioners. See COUNTY PALATINE.

DUCHY COURT OF LANCASTER.—This court, also called the Court of the Duchy Chamber of Lancaster, is a court held before the chancellor of the duchy, or his deputy, concerning all matter of equity relating to lands holden of the king in right of the Duchy of Lancaster, and, also, all matters of revenue relating to the duchy. It, therefore, resembles the old Court of Exchequer. It seems not to be a court of record and not to have exclusive jurisdiction. (3 Bl. Com. 78, 428.) Its jurisdiction appears to be rarely exercised, if not obsolete. See CHANCELLOR, § 4; COUNTY PALATINE; PALATINE COURTS.

DUCKING-STOOL.—See CASTIGATORY.

DUCROIRE.—Guaranty; equivalent to *del credere* (q. v.)

DUE.—OLD-FRENCH: *deu*; LATIN: *debitum*.

§ 1. As applied to a sum of money, due means either that it is owing or that it is payable; in other words, it may mean that the debt is payable at once or at a future time. Thus, where a bill of exchange is payable at a future day, the amount is *debitum in præsentia, solvendum in futuro*; when the time for payment has arrived, the amount is payable at once. It is a question of construction which of these two meanings the word "due" bears in a given case. See BILL OF EXCHANGE, § 6.

§ 2. Due is also often used in the sense of "just," "proper," "regular," or "sufficient." Thus, we speak of the "due presentment of a note," "due diligence," &c.

DUE, (defined). 4 Halst. (N. J.) Ch. 705; 17 Wis. 181, 184.

— (as meaning "payable"). 7 N. Y. 476.

— (synonymous with "owing"). 6 Pet. (U. S.) 29, 37.

— (synonymous with "owing" or "remaining unpaid"). 31 Mich. 215, 219.

— (in a statute). L. R. 13 Eq. 309.

— (in articles of association). 24 N. Y. 283; 2 Ch. D. 101.

— (in assignment of books of account). 14 Barb. (N. Y.) 11.

— (in insurance law, when loss becomes).

19 Barb. (N. Y.) 442.

— (when debt is). 1 Harr. (N. J.) 143.

25 Barb. (N. Y.) 326.

— (when legacy is). 2 Gr. (N. J.) 176, 177.

DUE A. B. \$325 PAYABLE ON DEMAND, (is a promissory note). 10 Wend. (N. Y.) 675, 680.

DUE A. ONE DOLLAR ON SETTLEMENT THIS DAY, (is a note, within statute against forgery). 5 Johns. (N. Y.) 237.

DUE ABSOLUTELY, AND NOT ON A CONTINGENCY, (in a statute). 65 Me. 534, 535.

DUE AND OWING, (defined). 6 Mod. 231, 232.

— (in an agreement). 12 Me. 429, 432.

— (in a statute). 5 Halst. (N. J.) 340.

DUE AND PAYABLE, (in a will). L. R. 7 Eq. Cas. 532.

DUE AND REASONABLE DILIGENCE, (what is, in making a search for an old indenture). 6 Dowl. & Ry. 147, 153.

DUE BILL.—A brief written acknowledgment of a debt, usually in the following words: "Due A. B. — dollars, [payable on demand.] Dated, &c., C. D." It is not made payable to order, like a promissory note.—*Burrill*.

DUE BILL, (not negotiable). Penn. (N. J.) 722.

DUE CARE, (defined). 10 Allen (Mass.) 18, 20, 532.

DUE CAUSE SLEWED, (in companies act). 12 Ch. D. 325.

DUE COURSE OF LAW, (defined). 4 Dill. (U. S.) 265, 266; 11 Wend. (N. Y.) 629, 636. *And see* 3 Cranch (U. S.) 300, 305; 5 *Id.* 363.

DUE COURSE OF LAW—DUE PROCESS OF LAW—LAW OF THE LAND, (defined). 50 Miss. 468, 479.

DUE, DEBTS NOW DUE AND PAYABLE, (in an assignment). 3 Leigh (Va.) 389, 391.

DUE DILIGENCE, (what is). 2 Pet. (U. S.) 543, 551; 10 *Id.* 572, 579; 70 N. C. 35, 55; 16 Serg. & R. (Pa.) 79, 82; Burr. 1358.

— (what is, is a question of law). 1 Dev. (N. C.) L. 381.

— (by indorsee). 4 Harr. (N. J.) 61.

— (by officer, in care of property in his custody). 51 Ill. 382.

— (in presentation of note). South. (N. J.) 782.

— (in notifying indorser). 2 Gr. (N. J.) 45.

DUE, FOR WHAT MAY BE, (in an agreement). 2 Dall. (U. S.) 380.

DUE FORM, (sheriff's certificate). 18 Minn. 66.

DUE FORM OF LAW, (in an indictment). 3 Yeates (Pa.) 407, 412.

DUE NOTICE, (of dishonor of note is a question of law). 1 T. R. 167, 169.

DUE, OWING, OR ACCRUING, (in a rule of court). 3 Q. B. D. 215.

DUE PROCESS OF LAW.—Law in its regular course of administration through courts of justice.

DUE PROCESS OF LAW, (defined). 58 Ala. 594; 49 Cal. 403, 404; 44 Conn. 291, 297; 11 Minn. 480, 496; 13 *Id.* 366, 368; 23 *Id.* 411, 413; 1 Civ. Pro. (N. Y.) 326; 43 Superior (N. Y.) 89, 91; 30 Wis. 129, 146; 2 Crim. L. Mag. 661. *See, also*, 50 Miss. 468; 74 N. Y. 183.

— (what is). 5 Otto (U. S.) 37, 294, 714; 71 Me. 241, 248, 259.

— (equivalent to the "law of the land"). 6 Otto (U. S.) 97, 101; 5 Mich. 251; 6 Neb. 37, 42.

— (is not necessarily judicial process). 30 Mich. 201, 211.

— (in a covenant). 4 Cow. (N. Y.) 173, 182.

— (in bill of rights). 14 Vr. (N. J.) 208.

— (in constitutional provision). 13 Minn. 368; 64 Mo. 564, 576; 23 Alb. L. J. 489; 11 Am. Rep. 559; 2 Crim. L. Mag. 341.

— (in New York constitution). 4 Hill (N. Y.) 140; 12 How. (N. Y.) Pr. 83, 238; 3 N. Y. 511, 517; 10 *Id.* 374, 397; 12 *Id.* 202, 209; 13 *Id.* 378, 393, 416, 445; 45 *Id.* 356, 358; 70 *Id.* 228, 234; 72 *Id.* 1, 10; 74 *Id.* 509, 519; 3 Park. (N. Y.) 421.

DUE PROCESS OF LAW, OR THE LAW OF THE LAND, (defined). 6 Coldw. (Tenn.) 233, 244.

DUE PROOF, (in summary proceedings act). 4 Zab. (N. J.) 511.

DUE SECURITY, (defined). Sax. (N. J.) 268.

DUE SECURITY, (for loan by trustees). Sax. (N. J.) 259.

DUE, SUM, (to determine justices' jurisdiction). Coxe (N. J.) 52, 53.

DUE THE PLAINTIFF, (in an award). 8 Dowl. & Ry. 285, 288.

DUE TO B. ONE DOLLAR, (is a promissory note). 2 Wheel. Am. C. L. 186.

DUE, WHEN, (acceptance of bill). 1 Harr. (N. J.) 444.

DUEL.—*See* CHALLENGE TO FIGHT; TRIAL.

DUELLING.—The fighting between two persons armed with deadly weapons, at an appointed time and place, upon a precedent quarrel. It differs from an affray (*q. v.*) in this, that the latter occurs on a sudden quarrel, while the former is the result of design. As to the punishment for duelling or sending a challenge, *see* the statutes of the several States.

DUELLUM.—The trial by battel or judicial combat. *See* BATTEL; TRIAL.

DUES.—Certain payments; rates or taxes.

DUES, HIS, (in an agreement). 12 Serg. & R. (Pa.) 190, 194.

DUKE.—The highest title of honor in England next to the Prince of Wales. His consort is called a "duchess." It is a mere title of dignity, without giving any domain, territory or jurisdiction over the place whence the title is taken. It was originally a Roman dignity, denominated *a ducendo*, leading or commanding. Accordingly, the first dukes (*duces*) were the *ductores exercituum*, commanders of armies. Under the emperors, the governors of provinces in war times were styled *duces*. In after times the same denomination was also given to the governors of provinces in time of peace.—*Encycl. Lond.*

DULOOCRACY.—A government where servants and slaves have so much license and privilege that they domineer.—*Wharton*.

DULY, (in pleading). 31 Cal. 271, 273; 2 Abb. (N. Y.) Pr. 421; 23 Barb. (N. Y.) 304.

DULY AND LEGALLY APPOINTED, (in an indictment). 127 Mass. 7, 13.

DULY APPOINTED, (in pleading). 17 Wend. (N. Y.) 197, 198.

DULY ELECTED, (in pleading). 3 Whart. (Pa.) 228, 244.

— (when a power to charge lands is). 1 Dick. 165.

DULY HONOR IT, (is not of itself a sufficient acceptance of a bill). 3 Mass. 1, 10.

DULY HONORED, (means "due payment"). 7 Taunt. 164, 167.

DULY LEVIED AND ASSESSED, (in complaint to enforce tax lien). 15 Minn. 479.

DULY PRESENTED, (meaning of). 3 Wend. (N. Y.) 488, 491.

DULY PROSECUTED, (what is). 2 Watts (Pa.) 53, 58.

DULY SWORN, (defined). 41 Me. 226.
— (in a statute). 42 Me. 367, 376.

DUM BENE SE GESSERIT.—During good conduct. Applied to offices from which the holder cannot be removed at the mere will of the appointing power, as is the case in those held *durante bene placito*.

DUM FUT IN PRISONA.—While he was in prison. An abolished writ of entry to restore a man to lands which he had aliened under duress of imprisonment. 2 Inst. 482.

DUM FUT INFRA ÆTATEM—**DUM FUT NON COMPOS MENTIS**.—Writs which lay for the recovery of land which had been aliened by a person "while he was within age," or "while he was *non compos mentis*." The former could be brought by the alienor after he had attained majority, or by his heir; the latter could only be brought by the heir. Litt. § 406; Co. Litt. 247 b.

DUM SOLA.—Whilst single or unmarried.

DUMB ANIMAL, (a dog is). 5 Tex. App. 475, 479.

DUMB BIDDING.—This occurred in sales at auctions, when the amount which the owner of the thing sold was willing to take for the article was written, and placed by the owner under a candlestick, or other thing, and it was agreed that no bidding should avail unless equal to that.—*Wharton*.

DUMMODO.—Provided; provided that. A word of limitation in old deeds, used in introducing a reservation.

DUN.—A hill or high open place. The names of places in England ending in *dun* or *don* were either built on hills, or near them in open places.

DUNA.—A bank of earth thrown out of a ditch.—*Cowell*.

DUNGEON.—Such an underground prison as was formerly placed in the strongest part of a fortress; a close prison, dark or subterraneous.

DUNIO.—A double; a kind of base coin less than a farthing.

DUNNAGE.—Pieces of wood or other material placed against the sides and bottom of the hold of a vessel, to stow the cargo and protect it from leakage.

DUNSETS.—People that dwell on hill places or mountains.—*Jacob*.

DUNUM.—A down or hill. See **DUNA**.

Duo non possunt in solido unam rem possidere (Co. Litt. 368): Two cannot possess the whole of one thing in specie.

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas—ratio et auctoritas (8 Co. 16): There are two instruments either to confirm or impugn all things—reason and authority.

DUODECIMA MANUS.—Twelve hands. The oaths of twelve men, including himself, by whom a defendant was anciently allowed to make his law. 3 Bl. Com. 343.

DUODENA.—A jury of twelve men.—*Cowell*.

DUODENA MANU.—Twelve witnesses to purge a criminal of an offence. See **DUODECIMA MANUS**.

DUPLEX QUERELA.—A remedy which a clerk in holy orders has against the bishop if the latter refuses or delays to admit and institute him to a church to which he is presented. It is a monition addressed by a judge of the Ecclesiastical Court to the bishop, requiring him to admit the party complaining, with a citation requiring the bishop, in case he does not comply with the monition, to appear and show cause why the right of institution has not devolved on the judge. It sometimes also contains an inhibition commanding the bishop to do nothing pending the suit to the prejudice of the party complaining. Phillim. Ecc. L. 440; *Willis v. Bishop of Oxford*, 2 P. D. 192. See **CITATION**, *ante* p. 212, *n*.

DUPLEX VALOR MARITAGII.—Double the value of marriage. A forfeiture imposed in former times upon infant wards who married without the consent of their guardians. 2 Bl. Com. 70.

DUPLICATE.—A document essentially the same as some other document. Agreements, deeds and other documents are frequently executed in duplicate, in order that each party may have an original in his possession. In such cases, in England, each party as a rule only executes the part which is to be delivered to the other party. The part executed by the grantor, promisor or person receiving the pecuniary consideration is called the "original," and the other the "duplicate." A duplicate lease is called a "counterpart" See **INDENTURE**; **LEASE**.

DUPLICATE, (draft). 40 N. Y. 345.

DUPLICATE OF TAXES, (in a statute). 81 Pa. St. 389, 392.

DUPLICATE WILL.—Where a testator executes two copies of his will, one to keep himself, and the other to be deposited with another person. Upon application for probate of a duplicate will, both copies must, in England, be deposited in the registry of the court of probate.

DUPLICATIO.—The Roman pleading, answering to our rejoinder.

Duplicationem possibilitatis lex non patitur (1 Rolle 321): The law does not allow a duplication of possibility.

DUPLICATUM JUS.—See **DROIT-DROIT**.

DUPLICITY.—A pleading is double, or open to the objection of duplicity, when it, or a portion of it, contains more claims, charges or defences than one. Formerly the general rule was that a pleading ought not to contain more than one claim, charge or defence, but it has gradually been relaxed, and now no longer applies to civil pleadings, except so far as they may be embarrassing or otherwise objectionable. The rule still applies in many cases of criminal charges, as to which, see **COUNT**, § 1. See, also, *Reg. v. Guthrie*, 1 C. C. R. 241.

DUPLY.—In Scotch law, the same as the Roman *duplicatio* (*q. v.*)

DURANTE ABSENTIA.—During absence. See **ADMINISTRATION**, § 3.

DURANTE BENE PLACITO.—During the pleasure of the appointing power, or the crown. See **DUM BENE SE GESSERIT**.

DURANTE MINORE ÆTATE.—See **GRANT**, § 8.

DURANTE VIDUITATE.—During widowhood.

DURATION OF LIFE.—The presumption in favor of the continuance of life is, in English law, very slight, and may be readily rebutted. After seven years' absence, if a person has not been heard of, and it was *primâ facie* reasonable to hear from him, he is presumed to be dead (*Doe d. Knight v. Nepean*, 5 Barn. & Ad. 86; 2 Mees. & W. 894), but the exact time of the death is not fixed by that presumption (*Re*

Phené, L. R. 5 Ch. 139). When two persons perish in one and the same calamity, there is no presumption from age, sex or other differential circumstances whatsoever, which of them was the survivor, but that is a matter to be proved by the party alleging the survivorship of either. 19 Beav. 459; 4 DeG. M. & G. 633; 8 H. L. Cas. 183. See **DEATH**.

DURESS.—OLD FRENCH, *duresce*; LATIN, *duritia*, hardship.

§ 1. **Duress** is where a man is compelled to do an act either by injury, beating or unlawful imprisonment (sometimes called "duress" in the strict sense, or "duress of imprisonment"), or by the threat of being killed, suffering some grievous bodily harm, or being unlawfully imprisoned (sometimes called "menace," or "duress *per minas*"). Duress also includes threatening, beating or imprisonment of the wife, parent or child of a person. Poll. Cont. 500; Chit. Cont. 186; Shep. Touch. 61; 1 Bl. Com. 130.

§ 2. An act done under duress has not, in general, the legal effect which it would otherwise have. Thus, if a man is compelled by duress to execute a deed or contract, he may afterwards avoid it. (See **UNDUE INFLUENCE**.) So a person is excused from guilt if he is compelled by personal violence, or threats of death, or grievous bodily harm, to do what would otherwise be a crime. (Steph. Crim. Dig. 18.) Not, however, if the crime consists in killing an innocent person. 4 Steph. Com. 33.

§ 3. **Duress of goods.**—Strictly speaking, there is no such thing as duress to the goods or property of a person. If, however, a person pays money to obtain the possession of property wrongfully detained, or if he pays, under protest, an excessive charge for the performance of a duty, he can recover it back. Poll. Cont. 502.

DURESS, (defined). 39 Me. 559, 561; 106 Mass. 291, 294.

— (what is). 6 Mass. 506, 511; 22 N. H. 303; 2 Watts (Pa.) 165, 167.

— (what is not). 8 Ct. of Cl. 461; 50 Ala. 437, 439; 1 Bail. (S. C.) 84, 86.

— (when arrest is). 26 Barb. (N. Y.) 122.

DURESS OF IMPRISONMENT.—See **DURESS**, § 1.

DURESS OF IMPRISONMENT, (what is). 3 N. H. 508, 511; 8 *Id.* 386.

—— (what is not). 10 Me. 325, 330.

—— (will not avoid a bond). *Ld. Raym.* 349, 357.

DURESS PER MINAS.—*See* DURESS, § 1.

DURESS PER MINAS, (what is not). 18 How. (U. S.) 307, 315.

DURHAM.—*See* COUNTY PALATINE.

DURING TERM TIME, (in a rule of court). 53 Me. 179, 181.

DURING THEIR LIVES, (in a will). 103 Mass. 489, 491.

DURING THEIR NATURAL LIFE, (in an agreement). 22 Ohio St. 526.

DURING THEIR NATURAL LIVES, (in a will). 65 Me. 118, 119.

DURSLEY.—Blows without wounding or bloodshed; dry blows.—*Blount*.

DUSTY-FOOT.—*See* COURT OF PIED-POUDRE.

DUTCH AUCTION.—The setting up of property for sale by auction above its value, and gradually lowering the price till some person takes it.—*Wharton*.

DUTIES.—*See* CUSTOMS; EXCISE.

DUTIES, (defined). 7 Wall. (U. S.) 433, 445.
—— (what includes, in a statute). 41 Conn. 140.

DUTY.—The correlative of right (*q. v.*) In practice, however, duty is usually applied to those acts which a person is bound to do by virtue of an office held by him, *e. g.* as trustee, executor, director, &c., while the obligation created by a contract is called a debt or liability, according to its nature.

DUTY, (defined). 24 How. (U. S.) 66, 108.

DWELL, (defined). 6 Hurlst. & N. 404, 408.

DWELLS, (in a statute). *L. R.* 1 Ex. 133.

DWELLS AND HAS HIS HOME, (in a statute). 3 Me. 229, 231.

DWELT LAST, (in a statute). 5 Pick. (Mass.) 370, 379.

DWELLING, (what is not a). 44 Cal. 320, 322; 13 Am. Rep. 165, 167.

—— (in homestead law). 38 Mich. 168.

—— (of a corporation). 30 L. J. N. S. Ex. 124, 127; 3 L. T. Rep. N. S. 631, 632.

DWELLING-HOUSE, (defined). 47 Me. 345, 347.

—— (what is a). 33 Me. 30, 31; 68 N. C. 207, 208; 72 *Id.* 598; 16 Gratt. (Va.) 543.

DWELLING-HOUSE, (what is not). 14 Bankr. Reg. 460; 7 Biss. (U. S.) 269; 20 Conn. 245, 247; 7 Jones (N. C.) L. 167; 13 Gratt. (Va.) 763.

—— (under fire laws). 1 Daly (N. Y.) 391; 33 How. (N. Y.) Pr. 378; 35 N. Y. 177.

—— (in a deed). 31 Me. 346, 350.

—— (in a statute). *L. R.* 6 C. P. 327; 4 *Id.* 525.

—— (in act defining arson). 1 Park. (N. Y.) Cr. 252.

—— (in road act). 7 Vr. (N. J.) 422.

—— (in an indictment). 1 Metc. (Mass.) 258.

—— (in a warrant). 41 Me. 254, 256.

—— (in an application for insurance). 20 N. Y. 52.

DWELLING-HOUSE OF ANOTHER, (what is not burning the). 26 Mich. 106.

DWELLING-PLACE AND HOME, (distinguished from "settlement"). 19 Me. 293, 300; 49 N. H. 553, 562.

DWELLING-PLACE OR SHOP, (in a statute). *L. R.* 4 Q. B. 316.

DYING DECLARATIONS.—*See* DECLARATION, § 5.

DYING DECLARATIONS, (defined). 17 Ill. 17.

DYING REQUEST, (in a will, raises a trust). 2 Bro. Ch. C. 38, 226.

DYING WITHOUT CHILDREN, (in a will). 2 Beas. (N. J.) 105.

DYING WITHOUT HEIRS, (in a will). 2 Halst. (N. J.) Ch. 637.

DYING WITHOUT ISSUE.—At common law this phrase means an indefinite failure of issue, and not a dying without issue living at the time of the death of the first taker. (8 Ohio St. 563.) This rule has been adopted in several of the United States. (16 Johns. (N. Y.) 409; 11 Wend. 259; 5 Paige 514.) In others, however, as in Ohio and Kentucky, it has been rejected. (6 Ohio St. 563; 14 B. Mon. (Ky.) 662.) In Mississippi it has been abolished by statute. (24 Miss. 350, 351.) And in England it is now provided by Stats. 7 Will. IV. and 1 Vict. c. 26, § 29, that the words "die without issue," or other words which may import a want or failure of issue, shall be construed to mean "dying without issue living at the time of the death of the person," and not an indefinite failure of issue, unless a contrary intention appears by the will.—*Burrill*.

DYING WITHOUT ISSUE, (in a settlement). *L. R.* 10 Eq. 99.

—— (in a will). 5 Dara (Ky.) 432; 3 J. J. Marsh. (Ky.) 91; 14 B. Mon. (Ky.) 323, 344, 708; 4 T. B. Mon. (Ky.) 203, 220; 35 Me.

349, 353; 33 Md. 11; 3 Am. Rep. 171; 4 C. E. Gr. (N. J.) 365; 8 *Id.* 435; 11 *Id.* 234; 5 Dutch. (N. J.) 188; Sax. (N. J.) 314; South. (N. J.) 431; Spenc. (N. J.) 6, 223; 2 Cow. (N. Y.) 380; L. R. 9 Ch. 651; L. R. 7 H. L. 408.

DYING WITHOUT LAWFUL ISSUE, (in a will). 10 Johns. (N. Y.) 12.

DYING WITHOUT LEAVING HEIRS OF HIS BODY, (equivalent to "dying without leaving issue"). 8 Mass. 3, 41.

DYNASTY.—A race or succession of kings of the same line or family.

DYSNOMY.—Bad legislation; the enactment of bad laws.—*Bouvier*.

DYVOUR.—A Scotch term for a person involved in debt, and unable to pay his creditors; synonymous with the word "bankrupt."—*Skene Verb. Sig.*

E.

E.—From; out of. Used in some Latin phrases instead of *ex*, the more common form of the same word.

E CONTRA.—From the opposite; on the contrary.

E CONVERSO.—Conversely; on the other hand. *See* CONVERSE.

E. G.—An abbreviation of *exempli gratia*. For the sake of an instance or example.

E PLURIBUS UNUM.—One out of many. The motto of the United States of America.

EA.—In old Saxon law, the water, or river; also the mouth of a river on the shore between high and low-water mark.

Ea est accipienda interpretatio quæ vitio caret (Bac. Max.): That interpretation which is free from fault is to be received.

Ea quæ commendandi causa in venditionibus dicuntur si palam appareant venditorem non obligant (D. 18, 1, 43): Those things which are said for the sake of commendation in sales, if they are plainly apparent, do not bind the seller. *See* CAVEAT EMPTOR.

Ea quæ dari impossibilia sunt, vel quæ in rerum natura non sunt, pro non adjectis habentur (D. 50, 17, 135): Those things which are impossible to be given, or which are not in the nature of things, are held not to be included.

Ea quæ in curia nostra rite acta sunt debitæ executioni demandari debent (Co. Litt. 289): Those things which are properly transacted in our court ought to be committed to a due execution.

Ea quæ raro accidunt, non temere in agendis negotiis computantur (D. 50, 17, 64): Those things which seldom happen are not rashly to be taken into account in transacting business.

EACH, (in a bond). Penn. (N. J.) 500; 10 Serg. & R. (Pa.) 33; 4 Watts (Pa.) 50, 51.

— (in a covenant). 2 Lev. 56.

EACH AND EVERY OF THEM, (in an agreement). 13 East 538.

EACH AND EVERY PART, (in an exception to a charge). 23 Minn. 66.

EACH HIS ONE-HALF, (in a contract, is several, not joint). 104 Mass. 217.

EACH OF THEM, (in a covenant). 1 Saund. 153.

EACH OF US, (in a bond). 2 Day (Conn.) 442; 2 Wheel. Am. C. L. 380; 5 Co. 103; Cro. Jac. 45; 3 Dowl. & Ry. 112.

EACH WITH THE OTHER, (in a lease). 1 Dyer 337, 338.

Eadem causa diversis rationibus coram judicibus ecclesiasticis et secularibus ventilatur (2 Inst. 622): The same cause is argued upon different principles before ecclesiastical and secular judges.

Eadem mens præsumitur regis quæ est juris et quæ esse debet, præsertim in dubiis (Hob. 154): The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.

EAGLE.—A gold coin of the United States of the value of ten dollars.

EALDER, or EALDING.—In old Saxon law, an elder or chief.

EALDERMAN, or EALDORMAN.—The name of a Saxon magistrate; alderman; analogous to earl among the Danes, and senator among the Romans. *See* ALDERMAN.

EALDOR-BISCOP.—An archbishop.

EALDORBURG.—In Saxon law, the metropolis; the chief city.

EALÉHUS.—An alehouse.

EALHORDA.—The privilege of assizing and selling beer.

EARL.—*SAXON: eori; LATIN: comes.*

A title of nobility, formerly the highest in England, now the third, ranking between a

marquis and a viscount, and corresponding with the French *comte* and the German *graf*. The title originated with the Saxons, and is the most ancient of the English peerage.

EARL MARSHAL OF ENGLAND.

—A great officer of state who had anciently several courts under his jurisdiction, as the Court of Chivalry and the Court of Honor. Under him is the herald's office, or college of arms. He was also a judge of the Marshalsea Court, now abolished. This office is of great antiquity, and has been for several ages hereditary in the family of the Howards. 3 Bl. Com. 68. 103; 3 Steph. Com. (7 edit.) 335 n.

EARLDOM.—The seignior of an earl; the title and dignity of an earl.

EARLES-PENNY.—Money given in part payment. See **EARNEST**.

earmark.—Property is said to be earmarked when it can be identified or distinguished from other property of the same nature. The term is chiefly used in respect of money, which differs from most other things in being rarely capable of being earmarked. As a general rule "money has no earmark," (*Whitecomb v. Jacob*, 1 Salk. 161, cited *Ex parte Dale*; *In re West of England Bank*, 11 Ch. D. 772; *In re Hallett's Estate*, 13 Id. 696; and see *Miller v. Race*, 1 Sm. Lead. Cas. 526;) and, therefore, if a sum is paid to a banker and is mixed by him in the ordinary course of business with other money in his custody, that particular sum is incapable of being distinguished from the rest. But if money is received by a person for a special purpose, and is kept separate from his other money, or is invested in some property or security which can be identified, then the money is said to be earmarked, and can be "followed," *i. e.* claimed and recovered by the person entitled to it. The question is of importance in cases where the receiver of the money has become insolvent, for unless it is earmarked the person entitled to it can only share in the general assets instead of recovering the whole sum. See **CLAYTON'S CASE**.

EARNEST.—Giving an earnest or earnest money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum as a token that the parties are in earnest or have made up their minds. The expression is chiefly of importance from the provisions of the statute of frauds making the giving of "something in earnest to bind the bargain" or in "part payment," one mode of dispensing with a written contract for the sale of goods for the price of \$50 or upwards. (Sm. Merc. L. 499.) It must be an actual payment. Chit. Cont 373.

EARNEST, (in statute of frauds, what is not) 108 Mass. 54.

— (to bind the bargain). 2 Bl. Com 447.

EARNEST REQUEST, (in a will). 2 Cox Ch 349, 354.

EARNINGS.—See **MARRIED WOMEN'S ACTS**.

EARNINGS, (what are not). 120 Mass. 94.

— (not synonymous with "wages"). 102 Mass. 235, 236; 115 Id. 165, 167.

EARNINGS OF WIFE, (in married women's acts). 4 C. P. D. 7.

EAR-WITNESS.—One who attests or can attest anything as heard by himself.

EARTH, (defined). 75 N. Y. 65, 76.

EARTH AND GRAVEL, (in a statute). 126 Mass. 177, 182.

EASEMENT.—**NORMAN-FRENCH:** *aisement* (Loys. Inst. Cout. § 291), from *aise*, convenience, accommodation (see *Godley v. Frith*, Yelv. 159); **LAW LATIN** *aisamentum*.

§ 1. **Dominant, and servient tenements.**—When A., the owner of a piece of land, has the right of compelling B., the owner of an adjoining piece of land, either to refrain from doing something on his (B.'s) land, or to allow A. to do something on his (B.'s) land, then A. is said to have an easement over B.'s land. A. is called the "dominant owner," and his land, the "dominant tenement." B. is called the "servient tenant," and his land, the "servient tenement."* The two tenements

*Gale Easm. 5; Godd. Easm.; Wats. Comp. Eq. 130. All modern cases and authors on the subject, from the *Termes de la Ley* downwards, state so distinctly that there cannot be an easement in gross, *i. e.* unattached to a dominant tenement, that the law may be considered as so settled. It is, however, to say the least, open to question whether in English law an easement

might not at one time be created in gross. Thus, Bracton says: "Si autem sic constituta fuerit servitus: tali et hæredibus suis, vel cui dare vel assignare voluerit, omnes tales per modum constitutionis sive donationis admittuntur ad usum successive." (F. 53 a.) The cases and text-books are equally unanimous in asserting that an easement is a privilege which can only belong to an

may adjoin either horizontally, as in the majority of cases, or vertically, as in the case of the owner of strata of minerals being entitled to work them in such a manner as to let down the surface of the land. Gale Easm. 23.

§ 2. The following are the principal kinds of easements—

(1) In respect of water. (*See WATER; WATER-COURSE.*) (2) In respect of air. (*See AIR.*) (3) In respect of light. (*See LIGHT.*) (4) Rights of way. (*See WAY.*) (5) Rights of support. (*See SUPPORT.*) (6) In respect of party-walls and fences (*q. v.*)

§ 3. Easements must be distinguished: (1) from rights of property or ownership (*q. v.*); (2) from profits *à prendre* (*q. v.*) which are rights to the produce or profit of land, while easements only relate to the user of land; (3) from natural rights (*q. v.*) such as the natural right to support (*q. v.*); (4) from licences (*q. v.*) which are personal, and confer no interest in the land.

§ 4. **Affirmative**, and **negative**.—As regards the servient owner, an easement is always negative, the obligation on him being either to suffer, or not to do something. As regards the dominant owner, easements are divisible into affirmative and negative. An easement is affirmative when it entitles the dominant owner to make active use of the servient tenement, or to do some act which, in the absence of an easement, would be a nuisance or a trespass. The principal affirmative easements are rights of way, the right to lead or discharge water over or on a neighbor's land, the right to use or affect the water of a natural stream in a manner not justified by natural right (*see WATER; WATER-COURSE*), and the right to carry on an offensive trade. (Gale Easm. 23; Shelf. R. P. Stat. 7. *See LEGALIZATION.*) An easement is negative when it merely restrains the servient owner from exercising an ordinary right of ownership over his

land; such are the rights of light and air (*q. v.*), and the acquired right of support (*q. v.*) Gale Easm. 24.

§ 5. **Continuous**.—Continuous easements are those of which the enjoyment is or may be continual without the interference of the person entitled, as in the case of an artificial water-course, or the right to light and air, as opposed to discontinuous easements, such as rights of way.

§ 6. **Apparent**.—Apparent easements are those the existence of which appears from the construction or condition of one of the tenements, so as to be capable of being seen or known on inspection, such as a drain or artificial water-course. Gale Easm. 25, 100; *Pyer v. Carter*, 1 Hurlst. & N. 922.

§ 7. **Necessary**.—Easements of necessity are those which are absolutely necessary for the enjoyment of a piece of land or building. Gale Easm. 96.

§ 8. **Disposition of owner of two tenements**.—The distinction between these classes of easements is of importance with reference to the rule that where the owner of a piece of land divides it, and conveys one part to a person without any stipulations on the subject, then the grantee becomes entitled by what is sometimes called "the disposition of the owner of two tenements,"* (1) to all continuous and apparent easements, *i. e.* to such easements as will enable him to enjoy the property in the same way as it is evident, from its condition, that the owner enjoyed it, and (2) to all easements of necessity. Thus, where the owner of land on which were some cattle-sheds, made an artificial water-course through another part of the land to supply them with water, and afterwards conveyed the cattle-sheds to another person, it was held that the grantee was entitled to the apparent and continuous easement of receiv-

individual, and not to a class by virtue of a custom. (*Mounsey v. Ismay*, 3 Hurlst. & C. 497, cited in Gale Easm. 5, *n.*) In *Gateward's Case* (6 Co. 60b), however, it was taken and agreed by the whole court, that "a custom that every inhabitant of such a town shall have a way over such land, either to the church or market, &c., that is good, for it is but an easement." (*See, also, Goodday v. Michell*, Cro. Eliz. 441; *Con-*

stable v. Nicholson, 14 Com. B. N. s. 230.) Hence, the right of the inhabitants of a place to walk, dance, or hold lawful sports on the land of another, is sometimes called an "easement of recreation." *See* Elt. Com. 283 *et seq.*

* This phrase seems to have been invented by Mr. Gale (p. 97); it has been judicially adopted. *See Leech v. Schweder*, L. R. 9 Ch. 472.

ing water from the water-course on the grantor's land. (*Watts v. Nelson*, L. R. 6 Ch. 166, approving *Pyer v. Carter*, 1 Hurlst. & N. 922. See, also, *Leech v. Schweder*, L. R. 9 Ch. 463.) But there is, in general, no corresponding implication in favor of the grantor, except so far as easements of necessity are concerned. (*Wheeldon v. Burrows*, 12 Ch. D. 31.) So, if I have a field enclosed by my own land on all sides and I alien this field to another, he shall have a way to it over my land as an easement of necessity, for without it he could not have any benefit of the field. 2 Rol. Abr., Graunt Z. pl. 17, 18, cited *Gale Easm.* 133.

§ 9. **Secondary easements.**—In some cases an easement is accompanied by certain rights which are necessary for its enjoyment, in which case it is called the "principal easement," and the accompanying rights are called "secondary easements." Thus, a right of water-course includes the secondary easement of going on the servient tenement to clean and repair the channel. *Bract.* 232a, cited by *Gale* 549; see *Pomfret v. Ricroft*, 1 Saund. 321.

§ 10. **Creation, and extinguishment of easements.**—Easements may be created—(1) by express grant, as where A. grants B. a right of way over A.'s land; (2) by implied grant, either on the principle of the disposition of the owner of two tenements (*supra*, § 8), or on the principle that a man cannot derogate from his own grant (see *DEROGATE*, § 1), and (3) by prescription (*q. v.*) They may be extinguished—(1) by express release; (2) by implied release, namely, (a) by merger or unity of possession, which occurs when the two tenements become united in the ownership of one person; (b) by necessity, as where the owner of the dominant tenement does, or authorizes the owner of the servient tenement to do, an act which necessarily prevents the future enjoyment of the easement; (c) by alteration of the dominant tenement, so as to make the easement inapplicable (see *ENCROACHMENT*; *LIGHT*); (d) by non-user, evidencing an intention of abandoning the easement. *Gale Easm.* 578 *et seq.*

§ 11. **Suspension of easement.**—In the case of a temporary or imperfect unity

of possession, as where the owner of the dominant tenement acquires a lease of the servient tenement, the easement is only suspended and not extinguished, and revives when the unity of possession ceases. *Gale Easm.* 581.

§ 12. As to the protection of easements, see *DISTURBANCE*, § 1.

EASEMENT, (defined). 53 Cal. 135; 11 Ill. 194; 2 Barb. (N. Y.) 432, 435; 28 *Id.* 336, 340; 18 N. Y. 109, 111; Ang. Waterc. 245; 3 Kent Com. 419.

— (what is). 57 N. H. 504, 514; 24 Wend. (N. Y.) 188; 1 Whart. (Pa.) 124; 5 Barn & C. 221; 9 *Id.* 95, 114.

— (what is not). 3 Watts (Pa.) 240.

— (a highway is). 1 Cow. (N. Y.) 238 240.

— (acquired by operation of law). 3 Wheel. Am. C. L. 485, 486.

— (conveyance of). 4 Wheel. Am. C. L. 263.

— (distinguished from "license"). 15 Wend. (N. Y.) 380, 392; 4 Watts (Pa.) 223.

— (distinguished from "*profit à prendre*"). 70 N. Y. 419, 421.

— (is not destroyed by a sale of a part of the estate to which it is appurtenant). 3 Paige (N. Y.) 254.

— (of turnpike company, on the land over which the road is located). 9 Pick. (Mass.) 109.

— (what words appropriate to revive, in a grant). 2 Nev. & M. 517.

— (will pass by a grant of the land). 16 Pick. (Mass.) 138, 141.

EASEMENT, PERPETUAL, (what is). 5 Mass. 164.

EASEMENTS, (appendant, and in gross). 19 Ill. 564.

EAST INDIA COMPANY.—This company was originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. Since the middle of the last century, however, the company's political affairs have become of more importance than their commerce. For a list of the various acts of the English legislature relating to British India and subjects connected therewith, see *Biddle's Table of Statutes and Supplement.*—*Wharton.*

EASTER.—A feast of the Christian church held in memory of our Saviour's resurrection. The Greeks and Latins call it *pascha* [passover], to which Jewish feast our Easter answers. This feast has been annually celebrated since the time of the apostles, and is one of the most important festivals in the Christian calendar, being that which regulates and determines the times of all the other movable feasts.—*Encycl. Lond.*

EASTER-OFFERINGS, or EAST-ER-DUES.—Small sums of money paid to the parochial clergy by the parishioners at Easter, as a compensation for personal tithes, or the tithe for personal labor. 2 and 3 Edw. IV. c. 13; 2 and 3 Vict. c. 62, § 9.

EASTER TERM.—One of the four terms of the English courts. It was formerly called a movable term, but afterwards fixed, beginning on the 15th of April and ending on the 8th of May in every year. See 11 Geo. IV. and 1 Will. IV. c. 70, § 6; 1 Will. IV. c. 3, § 3.

EASTERLING.—A coin struck by Richard II., which is supposed to have given rise to the name of sterling, as applied to English money.—*Wharton*.

EASTERLY, (defined). 32 Cal. 219.

EASTINUS.—An easterly coast or country.

EAT INDE SINE DIE.—Words used on the acquittal of a defendant, that "he may go thence without a day," i. e. be dismissed without any further continuance or adjournment.

EATING-HOUSE, (what is not). 73 N. C. 252, 254.

EAVES-DROPPERS.—Persons who listen under walls or windows, or the eaves of a house, to hear after discourse, and thereupon to frame slanderous and mischievous tales. (4 Bl. Com. 168.) In English law they are a common nuisance, and punishable by fine and finding sureties for good behavior. 2 Hawk. P. C. c. 10, § 58.

EBDOMADARIUS.—An officer in the cathedral churches who supervised the regular performance of divine service and prescribed the particular duties of each person in the choir.

EBEREMORTH — EBEREMORS — EBERE-MURDER.—See ABEREMURDER.

Ecce modo mirum, quod fœmina fert breve regis, non nominando virum conjunctum robore legis (Co. Litt. 132b): Behold, indeed, a wonder! that a woman has the king's writ without naming her husband who by law is united to her.

ECCENTRICITY, (described). Shelf. Lun. 48-51.

ECCHYMOSES.—In medical jurisprudence, an appearance of livid spots on the skin, occasioned by an extravasation of the blood from a vein between the flesh and skin. It is in fact an effusion or spreading of blood into the cellular tissue, produced by violent contusion; it is sometimes extended to a considerable distance beyond the seat of the injury.—*Wharton*.

ECCLESIA.—A church; an assembly; a parsonage.

Ecclesia ecclesiæ decimasolvere non debet (Cro. Eliz. 479): A church ought not to pay tithes to a church.

Ecclesia est domus mansionalis Omnipotentis Dei (2 Inst. 164): The church is the mansion house of the Omnipotent God.

Ecclesia est infra ætatem et in custodia domini regis, qui tenetur jura et hæreditates ejusdem manu tenere et defendere (11 Co. 49): The church is under age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriozem nequaquam (Co. Litt. 341): The church enjoys the privilege of a minor; it can make its own condition better, but not worse.

Ecclesia non moritur (2 Inst. 3): The church does not die.

Ecclesiæ magis favendum est quam personæ (Godolp. Rep. Can. 172): The church is to be more favored than the parson.

ECCLESIAE SCULPTURA.—The image or sculpture of a church in ancient times was often cut out or cast in plate or other metal, and preserved as a religious treasure or relic, and to perpetuate the memory of some famous churches.—*Jacob*.

ECCLESIARCH.—The ruler of a church.

ECCLESIASTIC, or ECCLESIASTICAL.—Something belonging to or set apart for the church, as distinguished from "civil" or "secular," with regard to the world.—*Wharton*.

ECCLESIASTICAL AUTHORITIES.—In England, the clergy, under the sovereign, as temporal head of the church, set apart from the rest of the people or laity, in order to superintend the public worship of God and the other ceremonies of religion, and to administer spiritual counsel and instruction. The several orders of the clergy are—(1) Archbishops and bishops. (2) Deans and chapters. (3) Archdeacons. (4) Rural deans. (5) Parsons (under whom are included appropriators) and vicars. (6) Curates. Church wardens or sidesmen, and parish clerks and sextons, inasmuch as their duties are connected with the church, may be considered to be a species of ecclesiastical authorities.—*Wharton*.

ECCLESIASTICAL BENEFICE.—See ADVOWSON; BENEFICE.

ECCLESIASTICAL COMMISSIONERS.—Commissioners established by statute, in England, principally for the purpose of preparing schemes for the improvement of the

ecclesiastical system, especially as to the equalization of the revenues and duties of the various dioceses, and to provide for the cure of souls in parishes where assistance was required. Several of such schemes have been given effect to by orders in council. By later acts a fund has been vested in the commissioners to enable them to make provision for the cure of souls in populous districts, and provision is accordingly made for the creation of ecclesiastical districts and parishes, and the appointment of ministers therein. Phillim. Ecc. L. 2090; 2 Steph. Com. 748; Stats. 6 and 7 Will. IV. c. 77; 13 and 14 Vict. c. 94; 29 and 30 Vict. c. 111, &c., &c. See PARISH.

ECCLESIASTICAL CORPORATIONS.—Corporations created for the furtherance of religion, and for the perpetuation of the rights of the church, the members of which are exclusively spiritual persons. They are of two kinds: (1) corporations sole, *i. e.* bishops, certain deans, parsons and vicars; and (2) corporations aggregate, *i. e.* deans and chapters, and formerly prior and convent, abbot and monks, and the like. (1 Bl. Com. 470.) Such corporations are called "religious corporations," or "religious societies," in the United States.

ECCLESIASTICAL COURTS.—Courts which, in England, have jurisdiction only in ecclesiastical matters. They are (1) the two provincial courts of Canterbury and York, and (2) the diocesan courts of each diocese. (See the titles). There are also various other courts which are either obsolete or are not strictly judicial tribunals, such are the Courts of Audience, the Court of the Vicar-General, of the Master of the Faculties (see FACULTY), &c. The Privy Council is the supreme Court of Appeal in ecclesiastical matters. Phillim. Ecc. L. 1201; 3 Steph. Com. 301; *Martin v. Mackonochie*, 4 Q. B. D. 760, 783.

ECCLESIASTICAL COURTS, (what are). 6 Q. B. D. 439, 446 *et seq.*

ECCLESIASTICAL LAW.—In English law, that part of the law which relates to the ministrations and governments, rights and obligations of the church established in the State, *i. e.* of the Church of England. (Phillim. Ecc. L. 12; 2 Steph. Com. 659.) It is derived from constitutions of synods and councils of the church, from canons of convocation, from usage and from acts of parliament. (Phillim. 19.) Public ecclesiastical law determines the authority of the church and those who govern it, and is both internal and external, the former being concerned with the constitution of the church relatively to the members of it, and the latter with the relations of the church to the State and religious bodies not directly connected with herself. *Id.* 12. See ADVOWSON; APPROPRIATION; BISHOP; CHURCH WARDEN; DIOCESE; RECTOR; TITHES; TITLE; VICAR; VISITATION.

EODICUS.—An attorney or proctor of a corporation; a recorder.

ECHANTILLON.—In French law, one of the two parts or pieces of a wooden tally. That in possession of the debtor is properly called the "tally," the other *echantillon*. (Poth. Obl. pt. 4, ch. 1, Art. II., § 8.)—*Burrill*.

ECHEVIN.—In French law, a municipal officer corresponding with "alderman" or "burgess," and having in some instances a civil jurisdiction in certain causes of trifling importance. (Meredith's Emer. Ins. 43 *n.*)—*Burrill*.

ECLECTIC PRACTICE OF MEDICINE, (distinguished from "allopathic"). 34 Conn. 452, 453.

ECUMENICAL.—General, universal; as an ecumenical council.

ECUMENICAL COUNCIL, (defined). 41 How. (N. Y.) Pr. 302, 344.

EDDERBRECHE.—In Saxon law, the offence of hedge-breaking.

EDESTIA.—In old records, buildings

EDIA.—Ease; aid or help.—*Cowell*.

EDICT.—LATIN: *edictum*.

A proclamation, command, or prohibition; a law promulgated by the sovereign.

EDICTAL CITATION.—In Scotch law, a citation published by posting. It is used against foreigners having lands within the kingdom, and against non-resident natives.—*Bel Dict.*

EDICTUM.—An edict (*q. v.*)

EDICTUM PERPETUUM.—A compilation of all the edicts of the Roman law, in fifty books, by Julianus, during the time of the emperor Adrian. A portion of this compilation is cited in the Digest.

EDICTUM THEODORICI.—This is the first collection of law that was made after the downfall of the Roman power in Italy. It was promulgated by Theodoric, king of the Ostrogoths, at Rome, in A. D. 500. It consists of 154 chapters, in which we recognize parts taken from the Code and Novellæ of Theodosius, from the Codices Gregorianus and Hermogenianus, and the Sententiæ of Paulus. The edict was doubtless drawn up by Roman writers, but the original sources are more disfigured and altered than in any other compilation. This collection of law was intended to apply both to the Goths and the Romans, so far as its provisions went; but when it made no alteration in the Gothic law, that law was still to be in force. (Savigny, Geschichte des R. R., &c.)—*Wharton*.

EDITOR, (defined). 5 Otto (U. S.) 714, 721.

EDITUS.—In old English law, put forth or promulgated, when speaking of the passage of a statute; and brought forth, or born, when speaking of the birth of a child.

EDUCATE, (in statute relating to guardians). 6 Heisk. (Tenn.) 395.

EDUCATE AND BRING UP MY GRANDDAUGHTER, (in a will). 10 Pick. (Mass.) 507.

EDUCATE THEIR ELDEST SON, (in a will). 2 Over 126 b.

EDUCATION ACTS.—The principal English statutes on the subject of education are the Elementary Education Acts, 1870 and 1873, directed towards the provision of public elementary schools in districts where there is insufficient accommodation for the purpose, and making attendance at school obligatory. These enactments are carried out (under the superintendence of the education department of the privy council) by school boards elected by the rate-payers of each district, and having the power of levying an education rate. (3 Steph. Com. 93 *et seq.*) See, also, the Public Schools Act, 1868, and the Endowed Schools Acts, 1869 and 1873, which deal with higher education (*Id.* 97 *et seq.*), and the Reformatory Schools Act, 1866, and the Industrial Schools Act, 1866, for the reformation and useful training of juvenile offenders. *Id.* 108 *et seq.*

EDUCATION OF GRANDCHILDREN, (in a will). 5 Harr. & J. (Md.) 430.

EFFECT.—The result or consequence of a cause producing it. The effect of a contract, deed or law is its operation.

EFFECT, (prosecuting suit with). 1 Johns. (N. Y.) Cas. 23; 3 Wend. (N. Y.) 54, 61; 1 Pick. (Mass.) 284, 286; 11 *Id.* 143, 144; 5 Barn. & C. 284; 1 Bos. & P. 410; 2 Brod. & B. 107; Carth. 248, 519; 8 Dowl. & Ry. 72; 12 East 585; 12 Mod. 380; 4 Moo. 606.

—(distinguished from "faith and credit"). 17 Mass. 514, 545.

EFFECT AND WITHOUT DELAY, (in a replevin bond). 2 Nev. & M. 703.

EFFECT FOLLOWING, (in a statute). 4 T. R. 767, 769.

—(in an indictment). 1 Chit. Cr. L. 233.

EFFECT, TO THAT, (in justification of slander). 2 East 426.

EFFECTS.—Property; goods and chattels; movables, including fixtures. 7 Taunt. 188.

EFFECTS, (defined). 6 How. (U. S.) 301, 321.

—(what are). 1 Bos. & P. N. R. 1; 2 Ves. & B. 240.

—(bills of exchange and promissory notes are). 3 Minn. 389, 404.

—(does not include "land"). 2 Mau. & Sel. 448; 15 Mees. & W. 450.

—(equivalent to "property" or "worldly substance"). 15 Ves. 500, 507.

—(exchequer bills are). 1 Russ. & R. C. C. 67.

—(in a deed or contract, includes "fixtures"). 1 Chit. Gen. Pr. 90.

EFFECTS, (in a devise). 1 East 33.

—(in a will). 14 How. (U. S.) 400, 420; 3 Binn. (Pa.) 476, 494; 1 Yeates (Pa.) 100, 101; 14 Am. Dec. 577 n.; 6 Barn. & C. 512; 3 Bro. P. C. 388; Cowp. 299; 11 East 290, 296; 15 *Id.* 394; L. R. 2 P. & D. 102; 1 Russ. 276, 280, 479; 13 Ves. 39; 15 *Id.* 507; 4 Com. Dig. 154; 8 *Id.* 472; 8 Petersd. Abr. 157; Ward Leg. 209.

—(in attachment law). 7 Fed. Rep. 361.

—(in its primary meaning does not embrace "real estate"). 2 Pres. Est. 168.

—(includes "choses in action"). 2 Watts (Pa.) 61, 65.

—(includes "real property"). 1 N. Y. Rev. Stat. [599] § 64.

—(includes "ship at sea"). 1 Hill (S. C.) 155.

—(synonymous with "personal estate"). 5 Madd. Ch. 69, 72.

—(synonymous with "property"). 16 East 221.

—(synonymous with "substance"). 9 Serg. & R. (Pa.) 434, 445.

—(synonymous with "worldly substance"). 1 Cowp. 299, 304.

EFFECTS, ALL AND SINGULAR MY, (in a devise). 2 Mau. & Sel. 448.

EFFECTS, ALL MY, (in a will). 4 Rawle (Pa.) 75, 81; 11 Ves. 205, 207.

EFFECTS, ALL THE REST, RESIDUE AND REMAINDER OF, (in a will). 3 East 516.

EFFECTS AND CREDITS, (meaning of). 65 Me. 301.

EFFECTS, BOTH REAL AND PERSONAL, (in a will). Cowp. 299.

EFFECTS, GOODS AND CREDITS, (in a statute). 3 Mass. 289, 291.

EFFECTS, HOUSEHOLD, (in a will). 1 Sim. & S. 189.

EFFECTS, OTHER, (in a will). 15 Ves. 320, 326, 507.

EFFECTS, STOCK, BOOKS AND BOOK DEBTS, (in an assignment). 1 Crompt. M. & R. 48.

EFFECTS UPON MY FARM, (in a will). 5 Barn. & Ald. 18.

EFFECTUAL ATTACHMENT, (in a statute). 106 Mass. 217, 222.

EFFECTUALLY REBUILDING AND REPAIRING, (in a will). 2 Barn. & Ad. 896.

Effectus sequitur causam (Wing. 226): The effect follows the cause.

EFFEERERES.—See AFFEERORS.

EFFLUXION OF TIME.—When this phrase is used in leases, conveyances, and other like deeds, or in agreements expressed in simple writing, it indicates the conclusion or expiration of an agreed term of years specified in the deed or writing, such conclusion or expiration arising in the natural course of events, in contradistinction to the determination of the term by the acts of the parties or by some unexpected or unusual incident or other sudden event.—*Brown.*

EFFORCIALITER.—Forcibly; applied to military force.

EFFRACTION.—A breach made by force.

EFFRACTOR.—One that breaks through; a burglar.—*Cowell*. Prison breakers.—*Spel. Gloss.*

EFFUSIO SANGUINIS.—The mulct, fine, or penalty imposed by the old English laws for the shedding of blood, which the king granted to many lords of manors. See **BLOOD-WIT**.

EFTERS.—In Saxon law, ways, walks, or hedges.—*Blount*.

EGALITY.—Owely (*q. v.*) Co. Litt. 169 a.

EGISTMENT.—See **AGISTMENT**.

EGRESS and REGRESS.—See **FREE ENTRY**, **EGRESS** and **REGRESS**.

EGYPTIANS.—Commonly called "Gypsies," are counterfeit rogues, Welsh or English, that disguise themselves in speech and apparel, and wander up and down the country, pretending to have skill in telling fortunes, and to deceive the common people, but live chiefly by filching and stealing, and, therefore, the Stats. of 1 and 2 Mar. c. 4, and 5 Eliz. c. 20, were made to punish such as felons if they departed not the realm or continued to a month.—*Termes de la Ley*.

Ei incumbit probatio, qui dicit, non qui negat: cum per rerum naturam factum negantis probatio nulla sit (Dig. 22, 3, 2): The proof lies upon him who affirms, not upon him who denies: since, by the nature of things, he who denies a fact cannot produce any proof. Thus, if in an action on a promissory note the defendant denied that he made the note, the burden of proof would lie on the plaintiff. But, if the defendant pleaded that he had paid the note, then the affirmative would be on him. Sm. Act. 156; Best Ev. 371.

Ei nihil turpe, cui nihil satis (4 Inst. 53): To whom nothing is sufficient, to him nothing is base.

EIA, or EY.—An island.—*Cowell*.

EIGNE.—See **BASTARD EIGNE**; **MULIER**.

EIK.—In the Scotch law, an addition to a reversion; an additional loan to a wadsetter (or mortgagor), who is the reversioner of the mortgaged estate; also, an addition to a testament; an addition to an inventory made up by an executor.

EINECIA.—Eldership. See **ESNECY**.

EIRE.—See **EYRE**.

Eisdem modis dissolvitur obligatio quæ nascitur ex contractu, vel quasi, quibus contrahitur: An obligation grow-

ing out of a contract or quasi contract, is dissolved in the same ways as those in which it is contracted.

EISNE.—The eldest.

EISNETIA.—The portion or share of the eldest son.—*Termes de la Ley*.

EITHER, (in a contract). 59 Ill. 87.

—— (in a will). 2 Serg. & R. (Pa.) 59, 64.

—— (means both, as well as the choice of one of two things). 59 Ill. 87, 89.

EITHER OF THEIR HEIRS, (in a bond). Cro. Jac. 322.

EITHER OF THEM, (in a covenant). 2 Burr. 1190.

EITHER OF THEM DIE WITHOUT ISSUE, (in a will). 2 Cro. 695.

EJECTA.—A woman ravished or deflowered, or cast forth from the virtuous.—*Blount*.

EJECTION.—A turning out of possession. 3 Bl. Com. 199.

EJECTIONE CUSTODIÆ.—See **DE EJECTIONE CUSTODIÆ**.

EJECTIONE FIRMÆ.—See **DE EJECTIONE FIRMÆ**.

EJECTMENT.—

§ 1. An action brought for recovering land from a person wrongfully in possession of it. Now, such an action is called, in England and in the code States, "an action for the recovery of land," as to which, see **RECOVERY**.

§ 2. The action of ejectment was originally a complicated proceeding, resting on several fictions. It was devised to escape from the still greater intricacies of real actions, which were the proper mode of trying questions of title to the freehold of land, while ejectment was available only for persons entitled to the possession of land under a lease or other chattel interest. To adapt the remedy to questions of freehold title two fictions were introduced—one, an imaginary lease by the real plaintiff (the freeholder) to an imaginary "John Doe" (the nominal plaintiff); and the other, an imaginary ouster of John Doe by "Richard Roe," the nominal defendant, commonly known as the "casual ejector." The person really in possession of the land was then allowed to defend the action on condition that he admitted the truth of these fictions and relied only on his title as a defence. Ad. Eject. 1-16; First Rep. C. L. P. Comm. 54 *et seq.*

§ 3. The C. L. P. Act, 1852, abolished these fictions in England and made the action of ejectment similar to other actions. (Smith Ac. (11 edit.) 405 *et seq.*) These fictions have also been abolished in the several States. See HABERE FACIAS POSSESSIONEM; WRIT OF RESTITUTION. Also, DESERTED PREMISES; LANDLORD AND TENANT; WRIT OF POSSESSION.

§ 4. Ejectment in county court.—In England, where the yearly value or rent of the land to be recovered does not exceed £20, an action of ejectment may be brought in the county court of the district, (County Courts Act, 1867, § 11 *et seq.*; Woodf. Land. & T. 777,) unless it is a case in which an action lies under the County Courts Act, 1856. County Courts Rules, 1877, xxxvii. 2, 25.

EJECTMENT, (against whom must be brought). 28 Cal. 534.

— (when it will lie). 9 Cal. 268, 270; 24 *Id.* 192.

EJECTMENT BILL, (defined). 1 Sax. (N. J.) 346.

EJECTUM.—That which is thrown up by the sea. (1 Pet. (U. S.) Adm. App. XLIII.) Also, jetsam, wreck, &c.

EJIDOS, (synonymous with "commons"). 15 Cal. 530, 554.

EJURATION.—Renouncing or resigning one's place.—*Encycl. Lond.*

Ejus est interpretari cujus est condere: It is his to interpret whose it is to enact.

Ejus est nolle, qui potest velle (D. 50, 7, 3): He who can consent may withhold consent.

Ejus est periculum cujus est dominium aut commodum: He who has the dominion or advantage has the risk.

Ejus nulla culpa est cui parere necesse sit (D. 17, 50, 169): He is not in any fault who is bound to obey.

EJUSDEM GENERIS.—Of the same kind or nature. It is a rule of legal construction that general words following an enumeration of particulars are to have their generality limited by reference to the preceding particular enumeration, and to be construed as including only all other articles of the like nature and quality. See an example of this construction in *Elliott v. Bishop*, 10 Exch. 4, 96; 11 *Id.* 113.

ELABORATUS.—Property which is the acquisition of labor.—*Spel. Gloss.*

ELDER TITLE.—A title older in point of existence coming simultaneously into operation with a title of younger origin, is called the "elder title," and prevails.

ELDEST ISSUE, MALE, (in a will). 7 Co. 41 b, 1 Cro. 40.

ELDEST SON, (in a will). 12 Ch. D. 170; L. R. 4 H. L. 43; L. R. 7 H. L. 634; 13 Sim. 33; 3 Swanst. 328, 336; 8 Taunt. 468.

ELECTED, (defined). 5 Nev. 111, 121.

— (when one is not). 23 Mich. 341.

ELECTED FOR THE YEAR ENSUING, (construed). 6 Conn. 428.

Electio est interna libera et spontanea separatio unius rei ab alia, sine compulsione, consistens in animo et voluntate (Dyer 281): Election is an internal, free and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.

Electio semel facta, et placitum testatum non patitur regressum (Co. Litt. 146): Election once made, and plea witnessed, suffers not a recall.

ELECTION is (1) the right, and (2) the act, of choosing. The term is applied both to rights and liabilities. "If I give unto you one of my horses in my stable, there you shall have the election, for you shall be the first agent by taking or seizure of one of them." Co. Litt. 145 a.

§ 2. Equitable doctrine of election.

—The equitable doctrine of election is founded on the principle that there is an implied condition, that he who accepts a benefit under an instrument must adopt the whole of it, conforming with all its provisions and renouncing every right inconsistent with them. (1 White & T. Lead. Cas. 311; notes to *Noys v. Mordaunt*, 2 Vern. 581, and *Streatfield v. Streatfield*, Cas. t. Talbot 176.) Thus, suppose A. by will or deed gives to B. property belonging to C., and by the same instrument gives other property belonging to himself to C., a court of equity will hold C. to be entitled to the gift made to him by A., only upon the implied condition of renouncing his own property in favor of B. He is therefore put to his election, whether he will take under the instrument, *i. e.* take the property given him by A., and give up his own property to B., or against the instrument, *i. e.* retain his own property, and either forfeit the property given him by

A., or take it and make compensation to B. for the value of his (C.'s) own property which he has retained. 1 White & T. Lead. Cas. 312; Haynes Eq. 293; Snell Eq. 169; Wats. Comp. 156; Pickersgill v. Rodger, 5 Ch. D. 173.

§ 3. In civil practice.—The selection of several remedies or forms of action allowed by law.

§ 4. In criminal law.—Where the defendant is charged in different counts of an indictment with different offences of the same class, and no motion to quash has been made before trial, the court may, at the trial, order the prosecuting officer to elect upon which count to base the prosecution, unless the several offences charged are but parts of one continuous transaction.

§ 5. To office.—Election is also the operation of choosing a representative, officer, &c., such as a member of congress or parliament, director, or the like. So a bishop is elected by the chapter of the cathedral by virtue of a *congé d'élire* (q. v.) As to election of guardian by an infant, see GUARDIAN.

ELECTION, (distinguished from "appointment"). 3 Metc. (Ky.) 210.
—— (in a statute). 54 Ala. 205.

ELECTION AUDITORS.—Officers annually appointed, in England, to whom was committed the duty of taking and publishing the account of all expenses incurred at parliamentary elections. (See 17 and 18 Vict. c. 102, §§ 18, 26–28.) But these sections have been repealed by the 26 Vict. c. 29, which throws the duty of preparing the accounts on the declared agent of the candidate, and the duty of publishing an abstract of it on the returning officer.

ELECTION DISTRICT, (defined). 41 Pa. St. 403.

ELECTION JUDGES.—Judges of the English High Court selected in pursuance of the 31 and 32 Vict. c. 125, § 11, and Jud. Act, 1873, § 38, for the trial of election petitions.

ELECTION OFFICER, (in a penal statute). 2 Dill. (U. S.) 219.

ELECTION PETITIONS.—Petitions for inquiry into the validity of elections of members of parliament, when it is alleged that the return of a member is invalid for bribery or any other reason. These petitions are heard by a judge of one of the Common Law Divisions of the High Court. Parliamentary Elections Act, 1868; Judicature Act, 1873, § 38.

Electiones fiant rite et libere sine interruptione aliqua (2 Inst. 169): Let elections be made rightly and freely, without any interruption.

ELECTOR.—He that has a vote in the choice of any officer; a constituent; also the title of certain German princes who formerly had a voice in the election of the German Emperors.

ELECTORS, (synonymous with "voters"). 9 N. W. Rep. 791.

ELECTORS OF PRESIDENT.—Persons chosen by the people at a so-called "presidential election," to elect a president and vice-president of the United States.

ELECTORS OF THE COUNTY, (who are). 10 Minn. 107, 123.

ELECTROTYPES, (in a fire policy). 13 Chic. L. N. 417.

ELEEMOSYNA.—Alms.—*Cowell*.

ELEEMOSYNA REGIS, and **ELEEMOSYNA ARATRI**, or **CARUCARUM**.—A penny which King Ethelred ordered to be paid for every plough in England towards the support of the poor.

ELEEMOSYNÆ.—Possessions belonging to the church.—*Blount*.

ELEEMOSYNARIA.—The place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor.—*Cowell*.

ELEEMOSYNARIUS.—The almoner or peculiar officer who received the rents and gifts, and in due method distributed them to pious and charitable uses.—*Cowell*.

ELEEMOSYNARY.—See CHARITY, § 2; CORPORATION, § 5.

ELEEMOSYNARY CORPORATIONS, (defined). 8 N. Y. 525, 533; 1 Bl. Com. 471.

—— (what are). 8 Wheat. (U. S.) 464, 480.

—— (distinguished from "civil"). 5 Wheat. (U. S.) 518, 660.

ELEGANTER.—A civil law term for "accurately."

ELEGIT.—A writ of execution by which a judgment creditor may, in England, and (in a modified form) in two or three of the United States, obtain possession of his debtor's chattels in satisfaction of the debt wholly or *pro tanto*; if they are not sufficient, he may also obtain possession of the debtor's land, and hold it until the debt is satisfied, either out of the rents and profits, or otherwise. By Stat. West. 2 (13

Edw. 1) c. 18, where a debt is recovered or acknowledged in the King's Court or damages awarded, it shall be in the election of the plaintiff, either to have a *fi. fa.* to the sheriff to levy the debt (see *FI. FA.*), or that the sheriff shall deliver to him all the chattels of the debtor (saving only his oxen and beasts of the plough), and the one-half of his land, until the debt be levied upon a reasonable price or extent. From the election given to the plaintiff by this statute, and from the entry of the award of this execution on the roll, "*quod elegit sibi executionem*," the writ of *elegit* derives its name. (Chit. Gen. Pr. 683; Co. Litt. 289b.) A creditor who has sued out the writ is called an "*elegit creditor*."

§ 2. By Stat. 1 and 2 Vict. c. 110, the remedy by writ of *elegit* was extended to the whole of the debtor's land, including copyholds and lands over which he has an absolute power of disposition (i. e. by appointment). The Statute of Frauds had made it applicable to trust estates.

§ 3. In executing this writ, the sheriff first seizes the chattels and land, and then impanels a jury to inquire as to their respective values. If the chattels are sufficient to satisfy the debt, he delivers them to the execution creditor; if they are not sufficient, he also delivers legal (not actual) possession of the lands to the creditor; if the latter cannot otherwise obtain actual possession, he must bring an action of ejectment. Sm. Ac. 199. While the creditor holds the lands he is called "*tenant by elegit*," and has a chattel interest in them (Co. Litt. 42a; see *CHATTELS*); he may obtain an order for the sale of the debtor's interest in them by presenting a petition to the High Court in the Chancery Division. Stat. 27 and 28 Vict. c. 112. See *EXTENT*; *INQUISITION*; *POSSESSION*; *SCIRE FACIAS*.

§ 4. The writ of *elegit* is a clumsy and inconvenient remedy, and was formerly never used, except where the execution creditor desired to seize the debtor's land. Of late years the writ has come into use in England for seizing chattels, because suffering the execution of a writ of *elegit* is not an act of bankruptcy on the part of the debtor, as is the case with a writ of *fi. fa.*, where the chattels are sold for £50 or upwards. *Ex parte Abbott*, 15 Ch. D. 447. See *ACT OF BANKRUPTCY*.

ELF-ARROWS.—Flint stones sharpened of each side in shape of arrow-heads; made use of in war by the ancients Britains, of which several have been found in England, and greater plenty in Scotland, where, it is said, the common people imagine they drop from the clouds.—*Jacob*.

ELIGIBLE TO OFFICE, (defined). 15 Ind. 327.

— (in a State constitution). 15 Cal. 117; 3 Nev. 566.

ELIMINATION.—The act of banishing or turning out of doors; rejection.

ELINGUATION.—The punishment of cutting out the tongue.

ELISORS, or ESLIORS.—*FRENCH: élire*, to choose.

Persons appointed to return a jury for the trial of an action when the jury returned by the sheriff and that returned by the coroner have been successively challenged to the array for partiality or default. (See *CHALLENGE*.) No challenge to the array can be made against a jury returned by *elisors*. The proceeding, however, is practically obsolete. Co. Litt. 158a; 3 Bl. Com. 354.

ELL.—A measure of length, answering to the modern yard. 1 Bl. Com. 275.

ELOGIUM.—In the civil law, a will or testament.

ELOIGN.—To remove. See *ELONGATA*; *ELONGAVIT*.

ELOIGNMENT.—Removal; sending to a distant place.

ELONGATA.—Where goods taken in distress and replevied are directed to be returned to the distrainer by a writ of delivery or *de retorno habendo*, and the sheriff finds that they have been *eloigned*, i. e. removed to places unknown, he makes a return to that effect, called a return of *elongata*. It is rare in practice. Woodf. Land. & T. 481. See *CAPIAS IN WITHERNAM*; *DE RETORNO HABENDO*; *REPLEVIN*.

ELONGATUS.—A return to a writ *de homine replegiando*, that the man was out of the sheriff's jurisdiction, whereupon a process was issued, called a "*capias in withernam*," to imprison the defendant himself without bail or mainprize, until he produced him.

ELONGAVIT.—In England, where in a proceeding by foreign attachment the plaintiff has obtained judgment of appraisal, but by reason of some act of the garnishee the goods cannot be appraised, (as where he has removed them from the city, or has sold them, &c.,) the serjeant-at-mace returns that the garnishee has *eloigned* them, i. e. removed them out of the jurisdiction, and on this return (called an "*elongavit*") judgment is given for the plaintiff that an inquiry be made of the goods *eloigned*; this inquiry is set down for trial and the assessment is made by a jury after the manner of ordinary issues. (Brand. For. Att. 124.) The proceedings on the inquiry are also sometimes called the "*elongavit*." See *FOREIGN ATTACHMENT*; *JUDGMENT*.

ELOPEMENT.—Elopement is when a married woman departs from her husband and dwells with an adulterer, for which, without voluntary reconciliation to her husband, she shall lose her dower, by the Statute of West. 2 c. 34.—*Termes de la Ley*.

ELSEWHERE, (defined). 1 Vern. 4 and n.

— (in a will). 3 Atk. 254; Cowp. 808, 811; 3 P. Wms. 56, 61.

— (in shipping articles). 2 Gall. (U. S.) 477, 479.

ELUVIONES.—Spring-tides.

ELY.—The ancient city and metropolis of the county of Cambridge, in England. The Isle of Ely was never a county palatine, but it was a royal franchise, which, however, by 6 and 7 Will. IV. c. 87, was taken away from the bishop, whose secular authority is now vested in the crown.—*Wharton*.

EMANCIPATION.—

§ 1. In Roman law, a solemn act by which a *pater-familias* divests himself of his power over his *filius-familias*, so that the *filius-familias* may become *sui juris*. There are three forms of *emancipatio*. (1) The old emancipation, which was by several *mancipationes*, followed by several enfranchisements. The *mancipatio*, or solemn sale, destroyed the *patria potestas* and put the *filius-familias* in *mancipio*, which was a kind of slavery. The enfranchisement by the purchaser made the *filius-familias sui juris*. As the enfranchiser acquired all rights of patronage, the father on occasion of the last *mancipatio*, added the trust-clause (*fiducia contracta*), i. e. an express condition that the purchaser should remancipate the *filius-familias* to the *pater-familias*, so that having ceased to be a *pater-familias*, and being only an ordinary purchaser, he might himself enfranchise his child, and so acquire the rights of patronage. (2) The *Anastasian* emancipation, introduced by Anastasius. It consisted in obtaining an imperial rescript, authorizing the emancipation, which was to be registered with the proper officer. In this way a *filius-familias* might be emancipated in his absence, which could not be done by the old form *per æs et libram*, since the purchaser had to lay hold of the thing. (3) The *Justinian* emancipation, a mere declaration of the *pater-familias* before the magistrate, no leave being required for the purpose (*recta via*).

§ 2. In American law, the word is generally used to indicate the setting free of slaves, but in Louisiana, and some other States, and also in England, it is still used in the sense of the Roman law.

EMANCIPATION, (what is). 15 Mass. 271, 275.

—— (what is not). 12 Mass. 383, 386; 15 Id. 203; 5 Barn. & Ald. 525; 1 Barn. & C. 345.

—— (attaining the age of twenty-one is not *ipso facto*). 1 Harr. (N. J.) 119.

—— (marriage of minor child is). 7 Wheel. Am. C. L. 160.

EMBARGO.—**SPANISH:** *embargar*, to hinder or detain.

§ 1. The temporary or permanent sequestration of the property of individuals for the purposes of a government, e. g. to obtain vessels for the transport of troops, the owners being re-imbursed for this forced service. Man. Int. Law 143.

§ 2. In international law, where one State has received or anticipates injury

from another State, it may lay an embargo on property within its territory belonging to subjects of the offending State as a means of securing redress. Such an embargo may be civil or hostile, according as it results in peace or war. (*Id.* and 144, n.) The term civil embargo is also sometimes used to describe the kind of embargo mentioned in section 1. See NON-INTERCOURSE; REPRISALS.

EMBARGO, (defined). 2 Wheat. (U. S.) 148, 153; 10 Mass. 347, 351; 5 Johns. (N. Y.) 299, 302.

—— (what is). 4 East 546, 559.

EMBARRASSING.—See AMENDMENT, § 2.

EMBARRASSMENT, (release in consideration of). 2 Pa. 521.

EMBASSADOR.—See AMBASSADOR.

EMBASSAGE, or **EMBASSY.**—The message or commission given by a sovereign or State to a minister, called an ambassador, empowered to treat or communicate with another sovereign or State; also the establishment of an ambassador.

EMBEZZLE—EMBEZZLEMENT.

—When a clerk, servant, agent, or public officer commits theft by converting to his own use any chattel, money or valuable security received or taken into possession by him for or in the name or on account of his master, principal, or employer, his offence is called embezzlement. (Steph. Cr. Dig. 220. See Reg. v. Rogers, 3 Q. B. D. 28.) If he converts to his own use a chattel of which he has merely the custody (not the possession) as clerk, servant, &c., of the owner, his offence is larceny and not embezzlement. (Steph. Cr. Dig. 209, 224. As to the summary jurisdiction of justices in cases of embezzlement, see Stone Just. 360.) As to the distinction between custody and possession, see CUSTODY. The punishment for embezzlement is generally the same as that for larceny (*q. v.*)

EMBEZZLE, (in a bond). 1 Doug. 214.

—— (in a declaration). 3 Wend. (N. Y.) 48, 53.

EMBEZZLED, (in insolvency act). 11 Allen (Mass.) 439.

EMBEZZLEMENT, (defined). 41 How. (N. Y.) Pr. 293; 40 Superior (N. Y.) 41, 49.

EMBEZZLEMENT, (what constitutes). 9 Cush. (Mass.) 284; 6 Paige (N. Y.) 337; 15 Wend. (N. Y.) 147.

—— (what is not). 9 Gray (Mass.) 5, 6; 14 *Id.* 62.

—— (who liable for). 10 Wend. (N. Y.) 299; 15 *Id.* 581; 2 Leach C. L. 912, 1033; Moo. C. C. 370.

—— (who not liable). 11 Metc. (Mass.) 64; 5 Den. (N. Y.) 76, 79; 6 How. (N. Y.) Pr. 59; 27 Vt. 578; Moo. C. C. 343.

—— (by agent, what constitutes). 31 Cal. 108.

—— (by officer). 10 Gray (Mass.) 173; 10 Mich. 54.

—— (indictment for). 1 Car. & P. 310; 3 Mau. & Sel. 548.

—— (what subject of). 24 Iowa 102; 5 Allen (Mass.) 502.

EMBLEMES. — NORMAN-FRENCH: *emblavence de bled*, corn sprung up above ground. Woodf. Land. & T. 703.

§ 1. In certain cases where a tenant of land has sown corn, or set roots, or sown "hempe or flax, or any other annual profit," and his estate is determined before the crop is ready to be gathered, he or his executors shall nevertheless have it, with the right of free entry, egress and regress on the land to take it and carry it away when it is ready. This is called the "right to emblements." Thus, if a tenant at will sows corns, and the lessor ousts him before it is ripe, he is entitled to go upon the land when it is ripe, and cut and carry it away, "because he knew not at what time the lessor would enter upon him." (Litt. § 68; Co. Litt. 55a; Woodf. Land. & T. 703.) For a similar reason, if a tenant for life sows corn and dies, his executors shall have the crop; or if he leases the land to an under-tenant, who sows a crop, and then the tenant for life dies, the crop belongs to the under-tenant. (Co. Litt. 55b.) But by a modern English statute (14 and 15 Vict. c. 25) it is provided that where a landlord entitled for his life or any other uncertain interest has let land at a rack-rent, and his estate determines by his death or otherwise, then the tenant, instead of being entitled to emblements, shall continue to hold the land until the expiration of the current year of his tenancy. Wms. Real Prop. 28.

§ 2. From the nature of the right to emblements it is obvious that it does not exist in the case of labor which yields no immediate annual profit, (as where a lessee at will plants young fruit trees, &c.,) nor

in the case of the tenancy being determined by the tenant's own act. Thus, where a woman holding land *durante viduitate* sows the ground and marries, the landlord shall have the emblements. Co. Litt. 55b.

EMBLEMES, (defined). 64 Pa. St. 134; 1 Chit. Gen. Pr. 91, 161.

—— (what are). Love. Wills 30; Toll. Ex. 150, 194.

—— (who entitled to). 4 Harr. & J. (Md.) 139.

—— (lessor when entitled to). 4 Moo. & P. 820.

—— (tenant when entitled to). 5 Halst. (N. J.) 128; 10 Johns. (N. Y.) 424.

—— (tenant when not entitled to). 10 Johns. (N. Y.) 361; 5 Barn. & Ad. 105; 7 Bing. 154.

—— (under-tenant when entitled to). 6 Wheel. Am. C. L. 388.

EMBLERS DE GENTZ.—A stealing from the people. The phrase occurs in the old rolls of parliament—"Whereas divers murders, *emblers de gentz*, and robberies are committed," &c. Rot. Parl. 21 Edw. III. n. 62.

EMBRACEOR.—He that, when a matter is in trial between party and party, comes to the bar with one of the parties, having received some reward so to do, and speaks in the case; or privately labors the jury or stands in the court to survey and overlook them, whereby they are awed or influenced, or put in fear or doubt of the matter. (19 Hen. VII. c. 13; *Termes de la Ley*.) But counsel, solicitors, &c., may speak in the case for their clients and not be embraceors.

EMBRACERY.—The offence committed by a person, who, by any means whatever, except the production of evidence and argument in open court, attempts to corrupt, influence or instruct any juryman. (Steph. Cr. Dig. 77; 1 Russ. Cr. & M. 360.) It is a species of maintenance (*q. v.*)

EMBRACERY, (defined). 5 Cow. (N. Y.) 503, 504; 2 Nev. 268.

—— (what constitutes). 5 Day (Conn.) 260, 273.

EMBRING DAYS.—Those days which the ancient fathers called *quatuor tempora jejunii*, of great antiquity in the church of England. They are observed on Wednesday, Friday and Saturday next after Quadragesima Sunday, or the first Sunday in Lent, after Whitsuntide, Holyrood day, in September, and St. Lucy's day, about the middle of December.—*Brit. c. liii.* The almanacs call the weeks in which they fall the "Ember-weeks," and they are now chiefly noticed on account of the ordination of priests and deacons; because the canon appoints

the Sundays next after the Ember-weeks for the solemn times of ordination; though the bishops, if they please, may ordain on any Sunday or holiday.—*Encycl. Lond.*

EMENDA.—Amends; something given in reparation for a trespass; or, in old Saxon times, in compensation for an injury or crime.—*Spel. Gloss.*

EMENDALS.—An old word still made use of in the accounts of the society of the Inner Temple, where so much in *emendals* at the foot of an account on the balance thereof, signifies so much money in the bank or stock of the houses, for reparation of losses, or other emergent occasions.—*Spel. Gloss.*

EMENDARE.—In Saxon law, to make amends for any crime, or trespass committed. And a capital crime, not to be atoned by fine, was said to be *inemendabile*.—*Leg. Canut. 2.*

EMENDATIO.—In old English law, the power of amending and correcting abuses, according to stated rules and measures.—*Cowell.*

EMENDATIO PANIS ET CEREVISIÆ.—In old English law, the power of super-vising and correcting the weights and measures of bread and ale (assizing bread and beer).—*Cowell.*

EMERGENT YEAR.—The epoch or date whence any people begin to compute their time.—*Wharton.*

EMIGRANT.—A person who leaves his country for any lawful reason, with a design to settle in another, taking his family and property with him.

EMIGRANT LABORERS, (in a contract). 2 Man. & G. 574, 590.

EMIGRATION.—The act of removing from one place to another. It is to be distinguished from "expatriation" (*q. v.*), which is the act of abandoning one's country, while emigration is, perhaps not strictly, applied to the act of removing from one part of the country to another.—*Bouvier.*

EMIGRATION, (distinguished from "expatriation"). 2 Cranch (U. S.) 280, 302.

EMINENCE.—An honorary title given to cardinals. They were called *illustrissimi* and *reverendissimi* until the pontificate of Urban VIII.—*Wharton.*

EMINENT DOMAIN.—The right which a government retains over the estates of individuals to resume them for public use.

EMINENT DOMAIN, (defined). 2 Paine (U. S.) 688; 11 Pet. (U. S.) 420, 641; 87 Ill. 317; 47 Me. 345, 348; 23 Mich. 471; 18 Minn. 155; 14 Ohio 147, 173.

— (what is). 3 Paige (N. Y.) 45; 18 Wend. (N. Y.) 9, 13.

— (what is not). 5 Paige (N. Y.) 137, 159.

— (distinguished from "taxing power"). Blackw. Tax T. 1.

EMISSARY.—A person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propagate opinions favorable to his employer.

EMISSION.—Expulsion from the body. At one time it was supposed that it was essential to prove emission of semen on the trial of an indictment for rape, but no such evidence is now required.

EMIT.—

§ 1. **In American law.**—To put forth or send out; to issue. Article I., § 10, of the United States constitution, contains the following inhibition: "No State shall *emit* bills of credit."

§ 2. **In Scotch law.**—To state verbally. 2 Al. Cr. Pr. 560.

EMIT, (bills of credit, in United States constitution). 4 Pet. (U. S.) 410, 432; 11 *Id.* 257.

EMOLUMENT, (in telegraph act). 3 Q. B. D. 428, 430.

EMPALEMENT.—A mode of inflicting punishment, by thrusting a sharp pole up the fundament.—*Encycl. Lond.*

EMPANNEL, or EMPANEL.—See IMPANEL.

EMPANELLED, (when jury are). 18 Conn. 166, 175.

EMPARLANCE.—See IMPARLANCE.

EMPEROR.—A sovereign prince who bears rule over large kingdoms and territories; a monarch of title and dignity, supposed to be superior to a king. Sovereigns of England have at times assumed the title to vindicate their equality with every European monarch. The title *imperator* was, by the early Romans, conferred on renowned and victorious generals who acquired great power and dominion, and was by degrees extended to signify a commander-in-chief sent upon important military service. After the time of the Antonines, the term was applied to the sovereign ruler of the Roman Empire, and after the fall of the Western Empire, the title was assumed by Charlemagne, the founder of the second, or German Empire. When the German branch of the Carlovingian family became extinct, the imperial crown became elective, and so continued until the last century. The title

of Emperor of Germany was given up by Francis II., who, in lieu of it, assumed the title of Emperor of Austria. The title of Emperor of the French was assumed by Napoleon the I., and was again assumed by Napoleon the III. The sovereign of Russia is also styled emperor. The present Queen of England is Empress of India. King Edgar, in an old charter, styles himself *Imperator*. In 1870, the king of Prussia acquired the title of Emperor of Germany.—*Wharton*.

EMPHYTEUSIS.—A term of Roman law, which finds a near equivalent in the phrase *fee farm* of English law, being the letting of lands or houses to a lessee forever, subject to the payment of a perpetual rent, usually of small amount. The interest of the holder is assignable, *i. e.* alienable; and the landlord may not eject him unless for non-payment of the rent agreed. In case the entire subject-matter of the lease is destroyed, the loss falls upon the landlord; but a particular loss falls upon the tenant.—*Brown*.

EMPHYTEUTA.—The person to whom an *emphyteusis* was granted; the tenant under a contract of *emphyteusis*.

EMPIRE.—The dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends; imperial power; supreme dominion; sovereign command.

EMPIRIC.—A practitioner in medicine or surgery without sound science or legal qualification; a quack.

EMPLAZAMIENTO.—In Spanish law, a citation served by order of a judge.

EMPLEAD.—To indict; to prefer a charge against; to accuse. *See* IMPLEAD.

EMPLOY, (defined). 11 N. Y. 593, 605.

EMPLOYEE, (defined). 3 Stew. (N. J.) 588, 590; 3 Ct. of Cl. 260, 262.

EMPLOYED, (defined). 14 Pet. (U. S.) 464, 475; 10 Mich. 83.

— (in a statute). 22 Ohio St. 194.

EMPLOYED BY HIM, (in a statute). 11 N. Y. 593, 605.

EMPLOYED IN TRANSPORTATION OF SLAVES, (in statute, includes "outward voyage"). Wilberf. Stat. L. 259.

EMPLOYED OR MADE USE OF, (in United States statutes). 2 Paine (U. S.) 721.

EMPLOYEE, (who is not). 1 McCrary (U. S.) 18.

EMPLOYEES, (in federal statute). 3 Ct. of Cl. 257.

EMPORIUM.—A place for wholesale trade in commodities carried by sea. The name is sometimes applied to a seaport town, but it properly signifies only a particular place in such a town.—*Smith Dict. Antiq.*

EMPOWERED AND DIRECTED, (in a statute). 8 Pet. (U. S.) 201, 212.

EMPOWERING, (in a resolve of the legislature). 5 Pick. (Mass.) 65.

EMPTIO—EMPTION.—The act of buying; a purchase.

EMPTIO BONORUM.—In the Roman law, the assignment of the estate and effects of an insolvent debtor, whether during his life or after his death, to a trustee for his creditors. Justinian deprived it of all its cumbrous formalities, but retained its effect, which is simply or very nearly that of an assignment upon bankruptcy in English law.

EMPTIO ET VENDITIO.—Buying and selling.

EMPTOR.—A buyer or purchaser.

Emptor emit quam minimo potest, venditor vendit quam maximo potest: The buyer purchases for the lowest price he can, the seller sells for the highest price he can.

EN AUTRE DROIT.—In the right of another. *See* AUTER DROIT.

EN DEMEURE.—In default. Used in Louisiana, of a defaulting debtor. 3 Mart. (La.) n. s. 394.

En eschange il covient que les estates soient egales (Co. Litt. 50): In an exchange it is desirable that the estates be equal.

EN GROS.—In gross.

EN VENTRE SA MERE.—In its mother's womb.

ENABLING POWER.—When the donor of a power, who is the owner of the estate, confers upon persons not seised of the fee the right of creating interests to take effect out of it, which could not be done by the donee of the power unless by such authority, this is called an "enabling power." 2 Bouv. Inst. n. 1628.

ENABLING STATUTES.—Certain statutes relating to the alienation of church lands by ecclesiastical corporations sole and (in a lesser measure) by ecclesiastical corporations aggregate. They are 32 Hen. VIII. c. 28; 5 Geo. III. c. 17; 5 and 6 Vict. cc. 27, 108; and 21 and 22 Vict. c. 57. Leases are by these statutes (speaking roughly) enabled to be made not exceeding twenty-one years or three lives; but with the various consents in the acts specified and subject to the conditions therein prescribed, building leases not exceeding ninety-nine years and mining leases not exceeding sixty years may be granted.—*Brown*.

ENACH.—The satisfaction for a crime; the recompense for a fault.—*Skene*.

ENAJENACION.—In Spanish law, a transfer of property, either by way of gift, sale or exchange.

ENAJENACION, (in a Mexican grant). 26 Cal. 88.

ENACT.—To act, perform, or effect; to establish by law; to pass as a law; to decree.

ENACTING CLAUSE, (of a statute). 2 Yerg. (Tenn.) 23 n.; 6 Wheel. Am. C. L. 38 n.; 8 *Id.* 146 n.; 1 Barn. & Ald. 94; 7 Barn. & C. 643; Cowp. 540, 543; 13 Ves. 25, 36; 17 *Id.* 508.

ENBREVER.—To write down in short. Brit. 56.

ENCAUSTUM.—*See* INCAUSTUM.

ENCEINTE.—Pregnant. *See* PREGNANCY.

ENCHESON.—The occasion, cause or reason for which anything is done.—*Termes de la Ley*.

ENCLOSE.—In the Scotch law, to shut up a jury after the case has been submitted to them. 2 Al. Cr. Pr. 634.

ENCLOSURE.—*See* INCLOSURE.

ENCLOSURE, (in a statute). 4 Paige (N. Y.) 519; 39 Vt. 34.

— (not so broad as "close"). 39 Vt. 326, 331.

ENCOURAGE, (in a criminal statute). 7 Q. B. D. 258.

ENCOURAGING AND ABETTING, (in a statute). 4 Burr. 2073, 2081.

ENCROACHMENT.—

§ 1. **Land.**—Encroachment is where a person attempts to extend a right possessed by him, as where a tenant or owner of land takes in or adds to it other land adjoining or near to it, so as to make the added land appear to be part of his original holding. The general rule is that if the wrongful act is acquiesced in, the encroachment (*i. e.* the land added) is considered as annexed to the original holding, and as having the same incidents as if it had originally formed part of it. (*See* Woodf. Land. & T. 696; *Kingsmill v. Millard*, 11 Ex. 313; *Earl of Lisburne v. Davies*, L. R. 1 C. P. 259; *Whitmore v. Humphries*, L. R. 7 C. P. 1; *A. G. v. Tomline*, 5 Ch. D. 750. As to whether the doctrine applies to copyhold land, *see* *A. G. v. Tomline*, 15 Ch. D. 150.) Therefore, if

a lessee of land makes an encroachment on an adjoining waste, at the expiration of the tenancy the encroachment will, as a general rule, belong to the landlord and not to the tenant. *See* APPROVE.

§ 2. **Easement.**—In the law of easements, where the owner of an easement alters the dominant tenement, so as to impose an additional restriction or burden on the servient tenement, he is said to commit an encroachment. The principle seems to be that if the excess can be ascertained and separated, such excess alone is bad, and the original right remains, but that if the original right and the encroachment are so blended together that they cannot be separated, then the original right is lost or suspended so long as the dominant tenement remains in its altered form. Gale Eas. 615.

ENCUMBER—ENCUMBRANCE.

—To encumber land is to make it subject to a charge or liability, *e. g.* by mortgaging it. Encumbrances include not only mortgages and other voluntary charges, but also liens, *lites pendentes*, registered judgments and writs of execution, &c. *See* COVENANT, § 8. *See, also*, INCUMBRANCE.

ENCUMBRANCE, (defined). 42 Mich. 90.

ENCUMBRANCE OF STREETS, (in city charter). 23 Minn. 10.

END, (synonymous with "expiration"). Plowd. 198.

END OF A PROSECUTION, (judgment is). 2 Watts (Pa.) 53, 58.

END OF A TERM, (in a deed). Willes 327, 334.

END OF YOUR CURRENT YEAR, (in a notice to quit). 4 Dowl. & Ry. 248.

ENDED, (entry in docket). 10 Serg. & R. (Pa.) 391.

ENDEAVOR, (defined). 1 Bos. & P. 181, 185; 2 Leach C. C. 790, 796.

ENDEAVORED, (in an indictment). 4 Com. Dig. 685 n. (d).

ENDEAVORING TO MAKE A REVOLT ON SHIPBOARD, (in act of congress). 11 Wheat. (U. S.) 417.

ENDENZIE, or EDENIZEN.—To make free; to enfranchise.

ENDORSEMENT.—*See* INDORSEMENT.

ENDOWMENT.—Wealth applied to any person or use. The assuring dower to a woman; the setting forth a sufficient portion for a vicar towards his perpetual

maintenance, when the benefice is appropriated.—*Cowell. See CHARITY, § 3.*

ENDOWMENT, (of church or pastor). 4 Har. & M. (Md.) 429, 451.

——— (of widow, defined). 27 Me. 381.

ENDOWMENT OR FUND, (in exemption law). 3 Vr. (N. J.) 360, 361.

ENEMY.—A nation at war with another nation; also a subject or citizen of such belligerent nation, or a subject or citizen of any other nation assisting or in the service of such belligerent nation. *See* 1 Kent Com. 94.

ENEMIES, (who are). 4 Dall. (U. S.) 37, 39.

——— (in marine policy). 43 Pa. St. 491.

——— (in United States constitution). 4 Sawy. (U. S.) 457.

ENFEOFF.—The technical and proper operative word of a feoffment (*q. v.*) 1 Davids. Conv. 72. *And see* OPERATIVE WORDS.

ENFEOFF, (defined). 1 Shep. Touch. 203.

ENFEOFFMENT.—The act of investing with any dignity or possession; also the instrument or deed by which a person is invested with possessions.

ENFRANCHISE—ENFRANCHISEMENT.—

§ 1. To enfranchise is to make free or to confer a liberty. Thus, in the old books, a man is said to be enfranchised when he is made a free man of a city, or burgess of a borough, or where an alien is made a denizen, or a villein is manumitted. (Co. Litt. 137 b.) At the present day to enfranchise often means, in England, to confer on a man the franchise, or the liberty of voting at parliamentary elections, while in America it has the additional significance of conferment of incorporation (*q. v.*)

§ 2. **Copyholds.**—To enfranchise copyhold land is to free it from the customs of that tenure and to render it subject to the same law as freehold land. (*See* Copyhold Act, 1852, § 34.) The operation may take place either at common law or under a statute.

§ 3. **At common law.**—Enfranchisement at common law is effected by the conveyance of the freehold to the copyholder, or by a release of all customs and services by the owner of the freehold. *Elt. Copyh.* 288.

§ 4. **Statutory enfranchisement** takes place under the Copyhold Acts, and is either voluntary or compulsory. The provisions as to voluntary enfranchisement make it possible for persons to enfranchise who could not do so at common law; *e. g.* persons having limited interests. Compulsory enfranchisement

is effected by an award of the copyhold commissioners, made on the application of either lord or tenant; the amount of compensation payable to the lord in commutation of his rights to fines, heriots, &c., is settled by valuation. When the enfranchisement takes place on the application of the tenant, the compensation consists of a gross sum of money payable by the copyholder, or in some cases it may remain a first charge on the land for a period not exceeding ten years; when it takes place on the application of the lord, the compensation consists of an annual rent-charge. (Act of 1852, § 7.) On a statutory enfranchisement, the rights of the lord or tenant to any minerals under the land are not affected. *Id.* § 48.

ENFRANCHISEMENT OF COPYHOLDS.—*See* ENFRANCHISE, §§ 2-4.

ENGAGE, (defined). 1 Zab. (N. J.) 369, 379.

——— (synonymous with "promise" or "agree"). 17 Mass. 122, 131.

ENGAGEMENT.—

§ 1. **In general.**—Engagement, in its most general sense, is any undertaking, promise or obligation by agreement or contract.

§ 2. **In English practice** the term has been appropriated to denote a contract entered into by a married woman with the intention of binding or charging her separate estate, or, with stricter accuracy, a promise which in the case of a person *sui juris* would be a contract, but in the case of a married woman is not a contract, because she cannot bind herself personally, even in equity; her engagements, therefore, merely operate as dispositions or appointments *pro tanto* of her separate estate.

§ 3. **General engagements.**—The promises or debts of a married woman which are not expressly charged by her on her separate estate are sometimes called her "general engagements," and do not bind her separate estate unless made with reference to and upon the faith and credit of that estate. *Johnson v. Gallagher*, 3 DeG. F. & J. 513; *Shattock v. S.*, L. R. 2 Eq. 182; *London Chartered Bank v. Lempière*, L. R. 4 P. C. 593; *Flower v. Buller*, 15 Ch. D. 665; *Poll. Cont.* 66; 1 *White & T. Lead. Cas.* 435. *See* LIMITATION; SEPARATE ESTATE.

ENGAGEMENT, (in charter of insurance company). 15 Johns. (N. Y.) 358, 390.

ENGAGEMENT OF TRADE OR BUSINESS, (what is an). 16 East 134.

ENGAGEMENTS, (in articles of copartnership). 8 Pet. (U. S.) 355, 358.

ENGINE, (in a statute). 6 Mau. & Sel. 182, 192; 8 T. R. 95, 106.

——— (to kill game, a gun is not an). 1 Wils. 315.

ENGINE OR INSTRUMENT, (in a game law). L. R. 5 Q. B. 336.

ENGINEERING PURPOSES, (in railroad charter). 18 Minn. 109.

ENGLETERRE.—England.

ENGLESHERIE, or ENGLECERIE.—An old word, which signifies the being an Englishman; for in ancient time, as appears by Bracton lib. 3, tract. 2, cap. 15, fol. 134, if a man had been slain or murdered, he was accounted to be "francigena;" which word implied every alien until Englesherie were proved, *i. e.* until it was made manifest that he was an Englishman, in which case the fine was much smaller than if the person killed had been a Dane or Norman.—*Termes de la Ley*.

ENGLISH BILL.—See BILL OF COMPLAINT, § 7.

ENGLISH INFORMATION.—A proceeding in the Court of Exchequer in matters of revenue. See 28 and 29 Vict. c. 104. Also, title EXCHEQUER INFORMATION.

ENGRAVE, (does not include "photography"). 5 Blatchf. (U. S.) 325.

ENGRAVED, (in a statute). 4 Bing. 234.

ENGRAVING, (copyright may be infringed by photographic process). 5 Blatchf. (U. S.) 362.

— (in a statute). 2 Atk. 93.

ENGRAVINGS.—See COPYRIGHT, § 3.

ENGROSS—ENGROSSING.—

§ 1. Formerly to engross a document was to write it in a peculiar hand (chiefly remarkable for its illegibility), derived from the court-hand in which records were anciently written. This engrossing hand was also used until recently in transcribing wills at the English probate office, but has now given way to the ordinary round hand.

§ 2. At the present day, engrossing means copying a deed, agreement, or the like, with the formal testatum and attestation clauses, so as to be ready for execution. Legislative bills are also ordered to be engrossed at a certain stage of their passage.

§ 3. In criminal law, engrossing was the offence of buying up large quantities of corn, &c., with intent to sell them again; it was abolished in England by Stat. 7 and 8 Vict. c. 24. 4 Steph. Com. 266, *n.* (p). See CORNER; FORESTALLING; REGRATING.

ENGROSSER.—He that purchases large quantities of any commodity in order to sell it at a high price. 7 and 8 Vict. c. 24.

ENGROSSING.—See ENGROSS.

ENITIA PARS, or AEISNETIA, which is derived of the French word *eisne*, for eldest (modern French *ainé*), and means the part of the eldest (Co. Litt. 166b), is used in the old books to denote the part or share taken

by the eldest sister when several coparceners make partition of their land by agreement. Litt. § 245.

Enitia pars semper præferenda est propter privilegium ætatis (Co. Litt. 166): The part of the elder sister is always to be preferred on account of the privilege of age.

ENJOIN.—To command, or require. In equity practice, to restrain the doing of a thing by injunction (*q. v.*)

ENJOY, (in a covenant). Cro. Jac. 172.

— (in a statute). 1 Str. 318, 366.

ENJOY A HOUSE PAYING RENT TO B., (in an award). 1 Cro. 211.

ENJOY FREELY, (in a will). 2 Pres. Est. 178.

ENJOY, TO HAVE, HOLD AND, (in a covenant). 2 Mod. 80.

ENJOY, TO HAVE, HOLD, OCCUPY, USE AND, (in a will). 1 Ves. 339.

ENJOYED, (defined). 17 Fla. 406, 408.

— (in a lease). 1 Chit. Gen. Pr. 157.

ENJOYED BY HIM, (in a will). 1 Barn. & C. 350.

ENJOYMENT.—The exercise of a right. It is to a right what possession is to a corporeal thing, and is therefore divisible, like possession, into simple, rightful, permissive, adverse, &c. Adverse enjoyment is more commonly known in the English books, as "enjoyment as of right," and occurs where a person exercises a right which does not belong to him in the same manner as if he were entitled to it, and without the permission of the true owner. Enjoyment which is open, peaceable, continuous, and of right, resembles adverse possession in being a mode of acquiring by lapse of time the right so enjoyed. Gale Easem. 207. See ADVERSE POSSESSION; PRESCRIPTION.

ENJOYMENT OF AN OFFICE, (what is). 14 East 549, 561.

ENLARGE.—In the old books, to enlarge a rule or order, is to extend the time within which it is returnable; to enlarge a prisoner is to set him at liberty.

ENLARGE, (in empowering statute). L. R. 6 H. L. 303.

ENLARGE THE TIME, (for making an award). 1 Mau. & Sel. 1.

ENLARGER L'ESTATE.—A species of release which enures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right

to the particular tenant and his heirs, this gives him the estate in fee. 1 Steph. Com. (7 edit.) 518.

ENLARGEMENT.—When a tenant in tail has created a base fee in lands, and it afterwards becomes united with the remainder or reversion in fee in the same lands in the same person, and there is no intermediate estate between them, then the base fee does not merge in the fee, but is *ipso facto* enlarged into as large an estate as a tenant in tail with the consent of the protector, if any, might have created by a disentailing assurance if the remainder or reversion had been vested in any other person. (Fines and Recoveries Act, § 39.) Thus, if land is settled upon A. for life, with remainder in tail to B., with remainder in fee to C., and B. executes a disentailing deed without the consent of A., the protector, B. acquires a base fee; if he subsequently purchases the reversion from C., his base fee is enlarged into a fee-simple, because if he had executed a disentailing assurance with the consent of A., the protector, he would have created a fee-simple. The object of the rule of law which produces an enlargement instead of (as in ordinary cases) a merger, is to prevent any mesne incumbrances from being let in or accelerated. Thus, if in the above example C. had mortgaged his reversion before conveying it to B., the enlargement would destroy the incumbrance thus created, while a merger would have made it a charge on B.'s new fee-simple. See **MERGER**.

ENLARGING STATUTES.—Statutes which enlarge or extend the common law remedy.

ENLIST, (defined.). 8 Allen (Mass.) 480, 485; 48 N. H. 279.

ENLISTED, (defined). 107 Mass. 282, 284.

— (means "mustered into military service"). 102 Mass. 127, 130.

— (when seamen are). 2 Sprague (U. S.) 103.

ENLISTMENT, (defined). 40 Conn. 283, 286; 8 Allen (Mass.) 480, 485; 48 N. H. 279.

ENORMIA.—Wrongs. See **ALIA ENORMIA**.

ENORMITIES, (in a statute). 12 Co. 19, 20.

ENORMOUS CRIME, (what is). 1 Ld. Raym. 637.

ENPLEET.—Anciently used for implead.—*Cowell*.

ENQUEST.—See **INQUEST**.

ENQUETE.—In the canon law, the examination of witnesses before trial, before a judge, in writing, for the purpose of using the depositions so taken as evidence on the trial.

ENQUIRY.—See **INQUIRY**; **WRIT OF INQUIRY**.

ENROLL—ENROLMENT.—

§ 1. To enroll is to enter (*i. e.* copy) a document on an official record. Originally

such records were kept in the shape of continuous rolls of parchment, but now most, if not all of them, are kept in books of the ordinary shape. (See **ROLL**.) The principal documents which require enrolment at the present day, in England, are recognizances and disentailing assurances (*q. v.*) (See, also, **BARGAIN AND SALE**, § 3.) The words "recording" and "registration" (*q. v.*) are used in a similar sense in America.

§ 2. **The Enrolment Office** was a department of the Court of Chancery and of the Chancery Division of the High Court, in which, as its name implies, the enrolment of documents was effected. (Dan. Ch. Pr. index, Enrolment; Second Rep., Legal Dep. Comm. 43.) By the Judicature (Officers) Act, 1879, the Enrolment Office was amalgamated with the Central Office (*q. v.*) The office of Clerk of Enrolments is to be abolished on the next vacancy. Section 4 *et seq.*; Rules of Court, December, 1879; April, 1880.

§ 3. **Chancery decrees.**—Formerly in the practice of the Court of Chancery, its decrees were not unfrequently enrolled in order to prevent appeals or rehearings being brought from a judge of first instance to the Court of Appeal in Chancery. The effect was that an appeal could only be brought to the House of Lords, or by a bill of review. This rule has been abrogated by the new practice. Dan. Ch. Pr. 879; *Hastie v. Hastie*, 2 Ch. D. 304. See **DOCKET**.

§ 4. **Enrolment of vessels.**—Under the United States laws regulating merchant shipping, vessels engaged in the foreign trade are registered, and those engaged in the coasting and home trade are enrolled; and the words "register" and "enrolment" are used to distinguish the certificates granted to those two classes of vessels. Enrolment applies only to vessels employed in domestic commerce—in voyages along the coast, or upon inland waters. The subject is regulated by Rev. Stat. tit. 50. (See *The Mohawk*, 3 Wall. (U. S.) 566.)—*Abbott*.

ENROLLED FOR SERVICE, (in militia statute). 3 Wend. (N. Y.) 274, 275.

ENROLMENT OF DECREE, (in a statute). 14 Wend. (N. Y.) 539, 543.

ENS.—Being, or existence.

ENSCHEDULE.—To insert in a list, account, or writing.

ENSEAL.—To seal, or affix a seal.

ENTAIL.—An entail exists when land, or money directed to be invested in the purchase of land, (Fines and Recoveries Act, § 71,) is

limited to a person and the heirs of his body, with or without prior estates. The land or the money, as the case may be, is then said to be entailed. *See* ESTATE TAIL; QUASI-ENTAIL.

ENTAILED MONEY.—Money directed to be invested in realty to be entailed. 3 and 4 Will. IV. c. 74, §§ 70, 71, 72.

ENTAILMENT, (in a statute). 1 Harr. (N. J.) 285, 293.

ENTENCION.—In old English law, the plaintiff's count or declaration.

ENTENDMENT.—*See* INTENDMENT.

ENTER is used not only in the technical sense of going upon land (*see* ENTRY), but also in the sense of making in a book or record a note of a transaction or a transcript of a document. Thus, a defendant to an action, if he wishes to contest it, enters an appearance (*q. v.*) Every order or judgment pronounced by the court, as such, and not simply by the judge, is usually entered by the clerk, and until this is done the order or judgment is not complete and cannot be enforced. In the English Queen's Bench Division, the operation of entering a judgment is usually called "signing judgment." *See* MINUTES; PASS.

ENTER AND OCCUPY, (in a contract). 3 Wend. (N. Y.) 104.

ENTER OR ATTEMPT TO ENTER, (in a statute). 5 Mas. (U. S.) 120, 123.

ENTERING, (on justice's docket, defined). 74 Ind. 56, 60.

ENTERING AN ACTION, (in a statute). 3 Binn. (Pa.) 209, 212.

ENTERING ON A REFERENCE, (in procedure act). L. R. 2 Q. B. 523.

ENTERING JUDGMENTS.—The formal entry of the judgment on the rolls of the court, which is necessary before bringing an appeal or an action on the judgment.

ENTERING SHORT.—When bills not due are paid into a bank by a customer, it is the custom of some bankers not to carry the amount of the bills directly to his credit, but to "enter them short," as it is called, *i. e.* to note down the receipt of their bills, their amounts, and the times when they become due, in a previous column of the page, and the amounts when received are carried forward into the usual cash column. (*See* Giles v. Perkins, 9 East 13.) Sometimes, instead of entering such bills short, bankers credit the customer directly with the amount of the bills as cash, charging interest on any advances they may make on their account,

and allow him at once to draw upon them to that amount. If the banker becomes bankrupt, the property in bills entered short does not pass to his assignees, but the customer is entitled to them if they remain in his hands, or to their proceeds, if received, subject to any lien the banker may have upon them.

ENTERING SHORT, (explained). 11 R. I. 119, 121.

ENTERPLEADER.—*See* INTERPLEADER.

ENTERTAINING VAGRANTS, (an indictment will not lie for). 2 Ld. Raym. 790.

ENTERTAINMENT, (in a statute). L. R. 10 Q. B. 594.

— (in licensing act). 1 Ex. D. 385, 394.

ENTERTAINMENT OR AMUSEMENT, (in a statute). L. R. 10 Q. B. 306; L. R. 4 C. P. 21.

ENTICE, (in a pleading). 12 Abb. (N. Y.) Pr. N. S. 187, 190.

ENTIRE.—

§ 1. A contract, claim, or the like, is said to be entire when each part is so connected with the rest that it cannot be separated into several distinct contracts or claims, as opposed to a severable or apportionable contract, &c. Thus, where a sailor was to be paid a certain sum for serving on a voyage, and he died before the voyage was completed, it was held that his executor had no claim to any part of his wages, because the contract was to perform the complete voyage. Chit. Cont. 666, 667; 2 Sm. Lead. Cas. 1. As to entire chattels real, *see* Co. Litt. 200 a. *See* APPORTIONMENT, § 3; SEVER.

§ 2. As to entire hereditaments, *see* HEREDITAMENT.

ENTIRE TENANCY.—A sole possession by one person, called "severalty," which is contrary to several tenancy where a joint or common possession is in one or more.—*Wharton*.

ENTIRE USE, BENEFIT, &C., (in a trust deed). 3 Ired. (N. C.) Eq. 414.

ENTIRETIES.—If lands are given to A. and B., husband and wife, and their heirs, they are not joint tenants, because they are in law considered as one person, but they take by entireties; *i. e.* neither can dispose of any part of the land without the concurrence of the other, and if they do not agree in making a disposition, the survivor takes the whole. *See* ESTATE, § 11.

ENTIRETY.—The whole; completeness.

ENTIRE CONTRACT, (what is). 14 Wend. (N. Y.) 257; 1 Campb. 361.

ENTIRE DAY, (in a statute). 43 Ala. 325.

ENTIRE DEMAND, (what is). 8 Wend. (N. Y.) 492.

ENTIRE INTEREST, (in a deed). 13 La. Ann. 410.

ENTITLE.—

§ 1. In its usual sense, to entitle is to give a right; therefore a person is said to be entitled to property when he has a right to it. *Churchill v. Denny*, L. R. 20 Eq. 534. See **RIGHT**; **TITLE**.

§ 2. In ecclesiastical law, to entitle is to give a title for ordination as a minister. *Gibs. Cod.* 141 n. See **TITLE**.

ENTITLED, (in a will). L. R. 9 Eq. 200; L. R. 13 Eq. 295.

—— (in married woman's act). 54 Ala. 269.

ENTITLED TO VOTE, (in penal statute). *Wilberf. Stat.* L. 250.

ENTITLING, (affidavits for bail). 2 Gr. (N. J.) 257.

—— (*certiorari*). 6 Halst. (N. J.) 75; *South. (N. J.)* 835, 837.

ENTREATY, WORDS OF, (in a will). 2 Mad. Ch. 458; 4 Ves. 703; 8 Com. Dig. 997.

ENTREBAT.—An interloper; an intruder.

ENTREGA.—In Spanish law, delivery.

ENTREPOT.—A warehouse or magazine for the deposit of goods.

ENTRY.—

§ 1. Entry is the act of going on land, or doing something equivalent, with the intention of asserting a right in the land. It may be made either in person or by a representative, such as a guardian, lessee, &c.

§ 2. **Actual, and in law.**—Entry is actual when the person making it goes on the land itself; while an entry in law is a constructive or fictitious entry. Thus, where "a man maketh a charter of feoffment, and delivers seisin within the view, [and] the feoffee dares not enter for feare of death, but claims the same, this shall vest the freehold and inheritance in him." (*Co. Litt.* 48b, 253b.) Coke also treats of several, general and special entry. *Co. Litt.* 15a. See **LIVERY**; and, also, **EGRESS**; **FREE ENTRY**; **REGRESS**. As to forcible entry, see that title.

§ 3. The doctrine of entry is now of

much less importance than formerly, owing to the abolition of most of the rules relating to seisin (*q. v.*); but entry is still a means of regaining possession of land from a person wrongfully in possession, being equivalent to recaption (*q. v.*) in the case of goods. It must be peaceable, and must be made within the period allowed by the statutes of limitation. 3 *Steph. Com.* 243. See **RIGHT OF ENTRY**.

§ 4. In the old books, entry often signifies a "right of entry" (*q. v.*) *Co. Litt.* 237b.

§ 5. **Entry of imported goods.**—Under the United States customs laws to enter imported goods is to submit a statement or description thereof with the original invoices to the collector of the port, or other officer designated by law, in order that the duties to be paid on such goods may be estimated, and their withdrawal from the custom-house for consumption, transportation, or storage in warehouse, &c., as the case may be, procured.

§ 6. **Under internal revenue laws.**—The term is also used in the internal revenue acts to designate the making of similar statements to the internal revenue officers.

ENTRY, (defined). 12 *Wheat. (U. S.)* 586, 588; 1 *Barn. & C.* 29, 35.

—— (in customs laws). 5 *Ben. (U. S.)* 25.

—— (in homestead act). 39 *Iowa* 634.

—— (of execution). 49 *Ga.* 576.

—— (of judgment). 54 *Cal.* 519; 49 *Ga.* 576.

ENTRY AD COMMUNEM LEGEM.

—A writ of entry which lies where a tenant for life, for another's life, by the curtesy, or in dower, aliens and dies, against whomsoever is in after in the tenement.—*Termes de la Ley*.

ENTRY AD TERMINUM QUI PRÆTERIIT.

—The writ of entry *ad terminum qui præterit*, lies where a man leases land to another for a term of years, and the tenant holds over his term. And if lands be leased to a man for the term of another's life, and he for whose life the lands are leased dies, and the lessee holds over, then the lessor shall have this writ.—*Termes de la Ley*.

ENTRY BY OWNER.—See **ENTRY**, § 1.

ENTRY FOR MARRIAGE IN SPEECH.

—A writ of entry *causa matrimonii præloquuti* lies where lands or tenements are given to a man upon condition that he shall take the donor to his wife within a certain time, and he does not espouse her within the said term, or

espouses another woman, or makes himself priest.—*Termes de la Ley*.

ENTRY IN CASU CONSIMILI.—A writ of entry *in casu consimili* lies where a tenant for life or by the curtesy aliens in fee.—*Termes de la Ley*.

ENTRY IN THE CASE PROVIDED.—A writ of entry *in casu proviso* lies, if a tenant in dower, alien in fee, or for life, or for another's life, living the tenant in dower.—*Termes de la Ley*.

ENTRY OF A FORECLOSURE, (in fire policy). 102 Mass. 230; 3 Am. Rep. 458.

ENTRY OF AN APPEARANCE, (defined). 5 Duer (N. Y.) 605.

ENTRY ON THE ROLL.—In former times, the parties to an action personally or by their counsel, used to appear in open court and make their mutual statements *viu voce*, instead of as at the present day delivering their mutual pleadings, until they arrived at the issue or precise point in dispute between them. During the progress of this oral statement, a minute of the various proceedings was made on parchment by an officer of the court appointed for that purpose; the parchment then became the record; in other words, the official history of the suit. Long after the practice of oral pleading had fallen into disuse, it continued necessary to enter the proceedings in like manner upon the parchment roll, and this was called "entry on the roll," or making up the "issue roll." But by a rule of H. T. 4 Will. IV., the practice of making up the issue roll was abolished; and it was only necessary to make up the issue in the form prescribed for the purpose by a rule of H. T., 1853, and to deliver the same to the court and to the opposite party. The issue which was delivered to the court was called the *nisi prius record*; and that was regarded as the official history of the suit, in like manner as the issue roll formerly was. Under the present practice, the issue roll or *nisi prius record* consists of the papers delivered to the court, to facilitate the trial of the action—these papers consisting of the pleadings simply, with the notice of trial.—*Brown*.

ENTRY, RIGHTS OF, (release of all). Shep. Touch. 340.

ENTRY WITHOUT ASSENT OF THE CHAPTER.—A writ of entry *sine assensu capituli* lies where an abbot, prior, or such as hath covent or common seal, aliens lands or tenements of the right of his church, without the assent of the covent or chapter, and dies.—*Termes de la Ley*.

ENTRY, WRIT OF.—See WRIT OF ENTRY.

ENUMERATED, (used in the sense of "mentioned," "indicated," "referred to," and "authorized"). 20 Hun (N. Y.) 360, 365.

ENUMERATED MOTIONS, (in a rule of court). 17 Wend. (N. Y.) 631. 635

Enumeratio unius est exclusio alterius: See EXPRESSIO UNIUS, &c.

ENUMERATORS.—Persons appointed to collect census papers or schedules. 33 and 34 Vict. c. 108, § 4.

ENURE.—To operate or take effect. Thus, where it is said that if an attornment be made by a tenant of land to one only of several grantees of the reversion, it shall enure to the rest (Shep. Touch. 265), it is meant that the attornment takes effect as if it had been made to all. See ATTORNMENT.

ENVOY.—A diplomatic agent sent by one State to another. A public minister of the second class.

Envoy, (who is not). 4 Burr. 2015, 2016.

EO INSTANTE.—At that very instant.

EO INTUITU.—With that view or intent.

EO NOMINE.—By that very name.

Eodem ligamine quo ligatum est dissolvitur (Co. Litt. 212b): A bond is released by the same formalities with which it is contracted.

Eodem modo quo quid constituitur, eodem modo destruitur (6 Co. 53): In the same way in which anything is constituted, in that way is it destroyed.

EORL.—This title, which seems to have been introduced by the Jutes of Kent, occurs frequently in the laws of the kings of that district, the first mention of it being in Ethb. 13. Its more general use dates from the later Scandinavian invasions; and though originally only a title of honor, it became in later times one of office, nearly supplanting the older and more Saxon one of "eolderman." Anc. Inst. Eng.

EOTH.—An oath.

EPILEPSY.—A disease of the brain, which, at uncertain intervals, throws the patient into fits or paroxysms, accompanied by loss of sensation and convulsive motions of the muscles. It leads to dementia (*q. v.*)

EPIMENIA.—Expenses or gifts.—*Blount*.

EPIPHANY.—A Christian festival, otherwise called the "Manifestation of Christ to the Gentiles," observed on the 6th of January, in honor of the appearance of the star to the three *magi*, or wise men, who came to adore the Messiah, and bring him presents. It is commonly called "Twelfth-day."—*Encycl. Lond.*

EPISCOPACY.—The office of overlooking or overseeing; the office of a bishop who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops.—*Wharton*.

EPISCOPALIA, or ONERA EPISCOPALIA.—Synodals or other customary payments from the clergy to their bishop or diocesan, which were formerly collected by the rural deans, and by them transmitted to the bishop.

EPISCOPALIAN.—

§ 1. In English ecclesiastical law, a dissident, in Scotland, from the established Presbyterian Church, and an adherent of the Reformed Catholic Church deriving apostolic succession from the apostles. The clergy of this kind are now placed nearly on a footing with the clergy of the Church of England when in England. See 27 and 28 Vict. c. 94.

§ 2. In America, of or pertaining to the Protestant Episcopal Church.

EPISCOPATE.—A bishopric.

EPISCOPUS.—(1) A superintendent, inspector or overseer; (2) a bishop.

Episcopus alterius mandato quam regis non tenetur obtemperare (Co. Litt. 134): A bishop needs not obey any mandate save the king's.

EPISCOPUS PUERORUM.—It was an old custom that upon certain feasts some lay person should plait his hair, and put on the garments of a bishop, and in them pretend to exercise episcopal jurisdiction, and do several ludicrous actions, for which reason he was called "bishop of the boys;" and this custom obtained here long after several constitutions were made to abolish it.—*Blount*. Such an officer is mentioned in the statutes of some of the cathedrals of the old foundation in England.—*Wharton*.

Episcopus teneat placitum, in curia christianitatis, de iis quæ mere sunt spiritualia (12 Co. 44): A bishop may hold plea in a court christian, of things merely spiritual.

EPISTOLA.—A letter; a charter; an instrument in writing for conveyance of lands or assurance of contracts.—*Calv. Lex.*; *Spel. Gloss.*

EPISTOLÆ.—Written opinions in response to questions of law, made by the Roman emperors, and sometimes by counsellors, to cases submitted to them for decision.

EPOCH, or EPOCHÆA.—The time at which a new computation is begun; the time whence dates are numbered.—*Encycl. Lond.*

EQUAL PARTS, (in a will). 3 Mod. 209.
— (meaning "equal per stirpes"). 6 C. E. Gr. (N. J.) 138.

EQUAL PROPORTIONS, (defined). 120 Mass. 552, 558.

EQUAL RATES, (means "pro rata"). 4 Bro. Ch. 286.

EQUAL SHARES, (in a will). 5 Barn. & Ald. 464; 1 Dowl. & Ry. 52.

EQUAL SHARE OF MY PROPERTY, (in a will). 1 Edw. (N. Y.) 241, 253.

EQUAL TAXES, (what are). 12 Mass. 252, 258.

EQUAL TO, (synonymous with "not less than"). 9 Vr. (N. J.) 505.

EQUALITY OF EXCHANGE OR PARTITION.—See **OWELTY**.

EQUALLY, (in a will). 3 Bro. Ch. 367; Cowp. 657, 660; 1 Cro. 443; 1 Dyer 25a; 9 East 276; 3 Ves. 258, 260.

— (synonymous with "alike"). 16 Mich. 211, 215.

EQUALLY AMONG, (in a will). 3 Ves. 629, 631.

EQUALLY AMONGST THEM, (in a will). 8 Petersd. Abr. 330 n.

EQUALLY AND THEIR HEIRS, (in a will). 1 Cro. 695.

EQUALLY BETWEEN HER RELATIONS AND MINE, (in a will). 83 Pa. St. 59.

EQUALLY DIVIDED, (in a will). 15 B. Mon. (Ky.) 10; 4 Bush (Ky.) 159; 6 Id. 649; 12 Id. 370; 1 Halst. (N. J.) 111; 1 Dev. (N. C.) Eq. 3; 2 Watts (Pa.) 185; 4 Wheel. Am. C. L. 437; 1 Atk. 494; 5 Barn. & Ald. 636; 7 Dowl. & Ry. 535; 1 P. Wms. 34.

EQUALLY DIVIDED BETWEEN THEM, (in a will). 1 Ld. Raym. 721; 2 Ves. Sr. 252.

EQUALLY DIVIDED, SHARE AND SHARE ALIKE, (in a will). 5 Ves. 509.

EQUALLY INTERESTED, (in judge's charge). 15 Minn. 519.

EQUALLY TO BE DIVIDED, (defined). 6 Ired. (N. C.) Eq. 437.

— (imports a tenancy in common). 3 Atk. 524, 525.

— (in a deed). 1 Ld. Raym. 422, 622; 5 Mod. 25; 12 Id. 227; 1 P. Wms. 14; 1 Salk. 391; 1 Wils. 341.

— (in a will). 4 Mass. 566, 567; 5 Cow. (N. Y.) 221, 228; 14 Wend. (N. Y.) 265, 340; 18 Id. 369; 5 Binn. (Pa.) 16, 23; 1 Desaus. (S. C.) 137, 139, 324, 329; 3 Atk. 731; 4 Bos. & P. 82, 90; 1 Bro. Ch. 118; 3 Id. 25; Cowp. 257, 657, 660; Cro. Eliz. 330, 4 East 313, 318; 3 Mod. 209; 11 Id. 108; 12 Id. 296; 1 P. Wms. 96; 2 Id. 280; 1 Salk. 226, 227; 1 Vern. 233; 2 Id. 323; 3 Ves. 629, 631; 9 Id. 197; 1 Wils. 165; 4 Com. Dig. 176.

EQUALLY TO BE ENJOYED, (in a will.) 3 Serg. & R. (Pa.) 135.

EQUALLY TO THE NEXT OF KIN, (in a statute). 2 Tyler (Vt.) 260, 265.

EQUERRY.—An officer of state under the master of the horse.

EQUES AURATUS.—A knight; because anciently none but knights were allowed to beautify and gild their armor with gold. But this word is rather used by the heralds than lawyers; for *eques auratus* is not a word in our

law for knight, but miles, and formerly chevalier. (4 Inst. 5.)—*Jacob*.

EQUILOCUS.—An equal. It is mentioned in Simeon Dunelm, anno 882.—*Jacob*.

EQUINOX.—That period (which occurs twice a year) when the days and nights are equal in length, *i. e.* when the sun is above the horizon one-half of a natural day.

EQUIPMENTS, (in a statute). 50 Md. 321.

EQUITABLE.—This term denotes (1) that which is fair (*see* EQUITY, § 1); (2) that which arises from a liberal construction or application of a legal rule or remedy (*see* EQUITY, § 2 *et seq.*); (3) that which is in accordance with, or regulated, recognized or enforced by, the rules of equity, as opposed to those of the common law. Thus, an equitable right, estate or interest is one which was originally recognized and enforced only in courts of equity, *e. g.* that of a *cestui que trust*, or of a mortgagor, after the day fixed for redemption had passed. So an equitable tenant for life is a person who is entitled for his life to the rents or income of property which is vested in trustees for his benefit. Equitable fraud and equitable waste are wrongs which were originally recognized and restrained only in courts of equity. *See* ASSETS; ASSIGNMENT; ESTATE, § 13; FRAUD; MORTGAGE; WASTE.

EQUITABLE ASSETS.—*See* ASSETS, § 3.

EQUITABLE ASSETS, (defined). 6 Conn. 233, 243; 1 Story Eq. Jur. § 552.

— (what are). 2 P. Wms. 416.
— (distinguished from "legal"). Love. Wills 59 *n.*

EQUITABLE ASSIGNMENT.—*See* ASSIGNMENT, § 4.

EQUITABLE ASSIGNMENT, (what amounts to). 14 Wall. (U. S.) 69.

EQUITABLE CONVERSION.—*See* CONVERSION, § 2.

EQUITABLE DEFENCES.—Under the English C. L. P. Act, 1854, (17 and 18 Vict. c. 126,) it was permitted to plead equitable defences at law, beginning the plea with the words, "For defence on equitable grounds." Such plea required to be such as would have entitled the defendant who pleaded it to an

unconditional injunction upon a bill filed in equity. Equitable pleas used to make the replications and all subsequent pleadings equitable also. (*Savin v. Hoylake Ry. Co.*, L. R. 1 Ex. 9.) Under the present practice, the rules of pleading in the common law and the chancery divisions are the same, and no words of introduction to an equitable plea are now required.

EQUITABLE ESTATES.—One of the three kinds of property in lands and tenements, the other two being legal property and customary property. That is properly an equitable estate or interest for which a court of equity affords the only remedy, and of this nature especially is the benefit of every trust, express or implied, which is not converted into a legal estate by the Statute of Uses. The rest are equities of redemption, constructive trusts, and all equitable charges. Burt. Comp. Eq. c. 8. *See* ESTATE, § 13.

EQUITABLE INTEREST IN LAND, (is real estate). 9 Ohio 145, 148.

EQUITABLE LIEN.—*See* LIEN.

EQUITABLE LIEN, (distinguished from "mortgage"). 56 Ala. 131.

EQUITABLE MORTGAGE.—The following mortgages are equitable: (1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority. (2) Where it is an equity of redemption, which is merely a right to bring an action to redeem the estate. (3) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land. (4) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate. *See* MORTGAGE.

EQUITABLE MORTGAGE, (what is). 71 Me. 567, 570.

EQUITABLE WASTE.—*See* WASTE.

EQUITY.—**LATIN:** *equitas*, equality or fairness, from *æquus*, equal. *See* the uses of *equitas* cited in 1 Spence Eq. 412.

§ 1. In its primary sense equity is fairness, or that rule of conduct which in

the opinion of a person or class ought to be followed by all other persons.

Equity in this sense is frequently opposed to law and legality, because that which is fair does not always constitute a legal claim or defence. *See* Calv. Lex.; Dirksen *Man. Lat. v. Æquitas*. In the same sense Coke speaks of the equity of the law; *Co. Litt.* 354b.

§ 2. **Equitable construction.**—When a legal rule or remedy is capable of two interpretations or applications, one literal or restrictive, and the other liberal, (*i. e.* calculated to make the rule or remedy operate fairly, and to extend its benefit to as many cases as possible,) the latter is called the equitable construction or application. (*See* 1 Spence Eq. 321 *et seq.*, 412.) It is in this sense that the right of stoppage *in transitu* (*q. v.*), the writ of *auditiâ querelâ* (*q. v.*), and the old action of ejectment are said to be equitable remedies, (*Clay v. Harrison*, 10 Barn. & C. 99;) and the jurisdiction of the common law courts, to set aside judgments obtained by default and confession, was called an "equitable" one. *Sm. Ac.* 163.

§ 3. **Equity of a statute.**—When a statute contains a provision which literally applies only to a particular class of cases, but it is clear from the nature of the provision that if another class of cases had been present to the mind of its framer it would have been extended to them, they are said to be within the equity of the statute, (*Cf. Dig. xix. 5, 11*), "and the reason hereof is, for that the lawmakers could not possibly set downe all cases in expresse terms." (*Co. Litt.* 24b, 70a; 2 *Inst.* 199.) Thus, an old statute literally applying only to executors, was held to extend by equity to administrators, "because they are of the like kind." *Termes de la Ley v. Equity*, where instances are given of the use of the term as restricting the general words of an act. This use seems obsolete.

§ 4. **"Equity" and "law."**—But the most important sense of the word equity is that in which it denotes a part of the general law of the land, as opposed to what is called the "common law" (*q. v.*) The distinction is purely historical, and arose from the fact that in former times the common law courts provided no rem-

edy in many cases where one was required. Hence the custom grew up of applying for redress in such cases either to the king in parliament or to the king in council, who referred the matters to the chancellor. In later times petitions were presented to the chancellor direct. The chancellor, being an ecclesiastic, and keeper of the king's conscience, did not feel bound to follow the rules of the common law, but gave such relief as he thought the petitioner or plaintiff entitled to "in equity and good conscience." *See* 1 Spence Eq. 411. *See, also, CHANCELLOR*, § 2.

§ 5. For a long time equity was an indefinite standard of right and wrong, and was regarded as having the function of mitigating the rigor and supplying the defects of the common law without any limitation except the personal opinions of each chancellor; but in more modern times equity became as fixed in its principles, and as incapable of introducing new remedies without the authority of parliament, as the common law itself.

§ 6. At the time of the passing of the English Judicature Act, equity was to be regarded as part of the law of England, distinguished from the common law only by reason of its being, or having originally been, administered in different courts (the principal of which was the Court of Chancery), and by a different procedure. (*Chute Eq.* 9.) In many cases the chancery and common law courts had concurrent jurisdiction (*e. g.* in cases of ordinary fraud), while in other cases the same right gave rise to different remedies in law and in equity (*see* INJUNCTION; SPECIFIC PERFORMANCE), and in others the rules of law and equity were in direct conflict.

§ 7. **Conflict of law and equity.**—The principal subjects on which the rules of equity either differed from or conflicted with those of the common law were trusts, administration, separate property of married women, mortgages, penalties and forfeitures, and the wrongs known as equitable fraud, equitable waste, &c. (*see* those titles); and as the doctrines of equity on these points were not recognized by the courts of common law, it sometimes happened that a person had rights which the common law would have allowed and assisted

him to enforce, but which a court of equity would not allow him to enforce, on the ground of the existence of an equitable right overriding or qualifying his legal rights. Thus, if A., the owner of an estate, stood by and allowed B. to expend money upon it in the belief that the estate belonged to himself, then if A. brought an action of ejectment against B. to recover possession of the estate, B. might file a bill in equity to restrain A. from ejecting him without compensation for his expenditure. (Day C. L. P. Acts 330; Earl of Oxford's Case, 1 Ch. R. 1; 2 White & T. Lead. Cas. 548.) Various statutes were from time to time passed, giving the common law courts jurisdiction to recognize and enforce equitable rights, (*see* Com. L. P. Act, 1854, § 83 *et seq.*; Day 328 *et seq.*; Chit. Cont. 801 *et seq.*; 23 and 24 Vict. c. 126; Married Women's Property Act, 1870;) and finally, by the Judicature Acts, 1873 and 1875, the Superior Courts of Equity and Common Law were amalgamated, the rules of law and equity on certain points were assimilated, and on all other points where there is a difference or conflict between equity and common law, the rules of equity are to prevail. (Jud. Act, 1873, § 25; Jud. Act, 1875.) Every division and judge of the Supreme Court of Judicature is now bound to recognize and give effect to all equitable rights and liabilities appearing incidentally in the course of any action or matter. Jud. Act. 1873, § 24. The student is recommended to read (1) Haynes' Outlines of Equity, (2) Snell's Principles of Equity, a useful book, consisting as it does of extracts, for the most part *verbatim*, from authoritative works, and (3) White & Tudor's Leading Cases. Watson's Practical Compendium of Equity is useful for practitioners. Spence's Equity is a learned but discursive work. *See* CHANCERY.

§ 8. In those of the United States which have adopted Codes of Procedure (by far the larger number of the States), an attempt has been made (as some suppose) to obliterate *all distinctions* between law and equity, most of the Codes following the language of the New York Code of 1848, which declares that, "The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished; and

there shall be in this State, hereafter, but one form of action for the enforcement or protection of private rights and the redress of private wrongs, which shall be denominated a civil action." (§ 69.) But it has been repeatedly held by the courts both of New York and other States, that the effect of this and like statutory provisions has been, and could only be, to unite the jurisdictions of law and equity in the same courts; to abolish the differences in the two methods of proceeding; to abrogate forms of action, and enable all causes to be prosecuted under one form—that of a civil action; to authorize a liberal allowance of amendments, and the disregard of technical and formal errors; and to assimilate civil procedure to that of equity courts in many matters of detail, though retaining trial by jury, and several "provisional remedies" drawn from the procedure of the common law courts; and that the great distinctive features of law and equity, as two separate systems of jurisprudence, still exist in substance, if not in name, notwithstanding these provisions of the statute law, or indeed any similar ones within the constitutional power of the legislatures to enact.

§ 9. "Equity"="equitable right."—Equity also signifies an equitable right, *i. e.* a right enforceable in a court of equity; hence, a bill of complaint which did not show that the plaintiff had a right entitling him to relief was said to be demurrable for want of equity; and certain rights now recognized in all the courts are still known as "equities," from having been originally recognized only in the Court of Chancery. *See* EQUITY OF REDEMPTION; EQUITY TO A SETTLEMENT.

§ 10. **Equities.**—Equity also denotes a right or obligation incident to a property or contract as between two persons, but not incident to the property or contract from its own nature. In this sense the word is generally used in the plural—"equities"—and is chiefly of importance with reference to assignments of choses in action, the rule being that where there is a chose in action, whether it is a debt or an obligation, or a trust fund, and it is assigned, the person who owes the debt or obligation, or has undertaken to hold the

trust fund, has, as against the assignee, exactly the same equities that he would have as against the assignor, (*Phipps v. Lovegrove*, L. R. 16 Eq. 88;) or it may be expressed in the converse manner, that the assignee takes the chose in action subject to the same equities as those to which it was subject in the hands of the assignor. Thus, a debt is due from B. to A., but there is also a debt due from A. to B., which B. might set off in an action by A. In this state of things A. assigns the first debt to C., without telling him of the set-off. B. is entitled to the set-off as against C. Again, if B. has contracted to pay a sum of money to A., but the contract is voidable on the ground of fraud or misrepresentation, and A. assigns the contract to C., who does not know the circumstances that render it voidable, then B. may avoid the contract as against C. Poll. Cont. 201, citing *Cavendish v. Graves*, 24 Beav. 163; *Graham v. Johnson*, L. R. 8 Eq. 36.

§ 11. **Bills of exchange.**—In the law of bills of exchange and promissory notes, a distinction is drawn between "equities attaching to the bill (or note) itself" (such as an agreement between the original parties to the bill that in certain events the acceptor shall not be held liable) and "collateral equities," such as set-off. (*Ex parte Swan*, L. R. 6 Eq. 344.) As a rule a bill or note in the hands of a *bona fide* holder for value is not subject to the equities between prior parties, but in the case of a bill or note negotiated when overdue, the holder takes it subject to the "equities attaching," though not to any collateral equities. Byles Bills 168. See **NEGOTIABLE**.

EQUITY, (defined). 23 Me. 360.

— (in oath to special jury, synonymous with "law"). 11 Ga. 459, 461.

EQUITY CASE, (what is not). 4 N. Y. 600.

EQUITY DRAFTSMAN.—See **DRAFTSMAN**, § 2.

EQUITY OF A STATUTE.—See **EQUITY**, § 3.

EQUITY OF REDEMPTION.—That right which a mortgagor has to redeem the mortgaged property at any time until he has been foreclosed, or until his right is barred by the statutes of limita-

tion, or until the property has been sold by the mortgagee under a power of sale. See further on this point under **MORTGAGE**; also, **EQUITY**.

EQUITY OF REDEMPTION, (explained). 34 Me. 50.

— (what is). 20 Wend. (N. Y.) 260, 263.

— (old meaning of). 21 N. Y. 343, 365.

EQUITY TO A SETTLEMENT.—

Where a husband becomes entitled to possession in right of his wife to property which he is unable to recover by an action at law, (say a legacy left to his wife by the will of a testator, or a share of personalty to which his wife has become entitled under a settlement,) although *primâ facie* the husband is entitled to receive the property, so that upon the executor or trustee paying him the wife's legacy or share of personalty, the husband's receipt would be a good discharge; yet if the intervention of a court exercising equitable jurisdiction be in any way called into action, whether by the husband to claim the property, or by the wife to enforce her equity, the court only allows the husband to receive the property, subject to what is called "the wife's right or equity to a settlement;" that is to say, unless the wife expressly waives this right or equity, the court will inquire into all the circumstances connected with the marriage (*e. g.* whether the husband has made a settlement on his wife, how much of her property he has already received, what is his pecuniary position, whether the husband and wife are living together or apart), and will, upon a consideration of all the material facts, decide how much of the property (if any) shall be paid to the husband, and how much (if any) shall be settled on the wife. (*Haynes Eq. 114; Snell Eq. 299; 1 White & T. Lead. Cas. 381 et seq.*) An infant *feme covert* cannot waive her equity to a settlement. *Shipway v. Ball*, 16 Ch. D. 376.

EQUIVALENT, (in patent law). 7 Wall. (U. S.) 327.

EQUIVOCAL.—Having a double, or several meanings or senses. See **AMBIGUITY**.

EQUULEUS.—A kind of rack for extorting confessions, at first chiefly practiced on

criminals, but afterwards made use of against the Christians. It was made of wood, having holes at certain distances, with a screw, by which a criminal was stretched to the third, sometimes to the fourth and fifth hole, his arms and legs being fastened on the *equuleus* with cords; and thus was hoisted aloft, and extended in such a manner that all his bones were dislocated. In this state, red-hot plates were applied to his body, and he was goaded in the sides with an instrument called *ungula*.—*Encycl. Lond.*

EQUUS COOPERTUS.—A horse equipped with saddle and furniture.—*Du Cange*.

ERASE, (defined). 1 Phillim. 417, 466.

ERASTIANS.—The followers of Erastus. The sect obtained much influence in England, particularly among common lawyers in the time of Selden. They held that offences against religion and morality should be punished by the civil power and not by the censures of the church or by excommunication.—*Wharton*.

ERASURE.—See ALTERATION.

ERASURE, (what is). 3 P. Wms. 419.
— (of an indorsement on a promissory note). 3 Halst. (N. J.) 58.

ERASURES, (in a will). 1 Vern. 256.

— (of deeds). 4 Wheel. Am. C. L. 276.

ERCISCUNDUS.—In the civil law, an action somewhat similar to the modern suit for partition.—*Calv. Lex*.

ERECT, (in a will). 8 Ves. 186, 191.

ERECT A BUILDING, (defined). 45 N. Y. 153, 161.

ERECT A FREE SCHOOL-HOUSE, (in a will). Amb. 751.

ERECT AND ESTABLISH, (in a will). 3 Mad. Ch. 306.

ERECTED, (in arson statute). 45 N. Y. 153, 161.

ERECTED AND CONSTRUCTED, (in a statute). 1 Ashm. (Pa.) 377.

ERECTED FOR PUBLIC USE, (in a statute). 2 Allen (Mass.) 159.

ERECTING, (what is). 1 Gray (Mass.) 163.

ERECTING AND ENDOWMENT OF AN HOSPITAL, (a legacy for). 1 Cox Ch. 163.

ERECTING OR REPAIRING, (in mechanics' lien act). 51 Ill. 422.

ERECTION, (means "construction"). 121 Mass. 229, 231.

— (in a statute forbidding erection of wooden buildings). 27 Conn. 332; 2 Rawle (Pa.) 262.

— (not synonymous with "building"). 9 Car. & P. 234.

ERECTION OF A DWELLING-HOUSE, (in a statute). 4 Conn. 65.

ERECTION OF ANY BUILDING, (in an indenture). 119 Mass. 254.

ERLECTIONS, (what are). 1 Chit. Gen. Pr. 173.

— (in a lease). 2 Barn. & C. 608, 615.

ERLECTIONS AND IMPROVEMENTS, (in a covenant). 2 Man. & G. 729, 757.

ERIACH.—In the Irish Breton law, recompense for murder.—*Spencer's Ireland*.

ERN.—The names of places ending in "ern" are said to imply a melancholy situation.—*Jacob*.

ERNES.—The loose scattered ears of corn that are left on the ground after the binding.—*Kenn. Gloss*.

EROTOMANIA.—GREEK: *ἔρως*, love and *μανία*, frenzy.

A disease of the brain characterized by a morbid condition of mind, and frequently by delusion, on sexual subjects. The distinction between it and *nymphomania* is that in the latter, although the condition of mind is similar, the disease is caused by a local disorder of the sexual organs reacting on the brain.—*Wharton*.

ERRANT.—Itinerant; applied to justices on circuit, and bailiffs at large, &c. See EYRE.

ERRATICUM.—A waif or stray.—*Cowell*.

ERROR.—

§ 1. In civil practice.—In the common law practice in civil actions, error is some mistake in the foundation, proceeding, judgment or execution of an action in a court of record, requiring correction either by the court in which it occurred (in case of error in fact), or by a superior court or court of error (in case of error in law); to "bring error," is to apply for the rectification required. (Co. Litt. 288b; Sm. Ac. (11 edit.) 220.) Error in fact is some mistake in the process (not in the facts of the case; for that the remedy is a new trial. See TRIAL), (e. g. where an infant appeared by attorney instead of by guardian,) while error in law is a mistake in the judgment, such as might have formed the foundation for a demurrer, motion in arrest of judgment, &c. (3 Steph. Com. 578; for the practice on proceedings in error, see Archb. Pr. 483 *et seq.*) Errors in law are either common (e. g. that the judgment was given for the plaintiff instead of for the defendant), or special, which is where some matter appears on the face of the record which shows the judgment to be erroneous. (Archb. Pr. 483.) Proceedings in error in civil cases have been abolished, in England and in many of the States, and a more simple mode of appeal substituted.

(See APPEAL.) But in some States the old practice still applies, and the plaintiff in error (the appellant), is therefore obliged to "assign errors," *i. e.* specify the defects complained of in the judgment of the court below; the defendant then delivers either a joinder in error, or a plea to the assignment of errors, or a demurrer, and so on until issue is joined, when the case is set down for argument. Archb. Pr. 1424.

§ 2. In criminal practice.—Appeals in criminal cases are also brought in England, and in a few of the States, by proceedings in error, namely, by writ of error; the plaintiff in error (*i. e.* the prisoner or accused) assigns or indicates the errors of which he complains in the indictment. Archb. Cr. Pl. 203, where forms of assignment of errors are given. See JOINDER; WRIT OF ERROR.

ERROR, (in fact and law). 11 Johns. (N. Y.) 460.

——— (in telegraphing). 6 Abb. (N. Y.) Pr. N. s. 405, 423; 54 Barb. (N. Y.) 505, 515.

——— (means "excess," in Section 627 of the Code). 50 Iowa 313.

——— (writ of, will not lie on dissolution of a foreign attachment). 2 Yeates (Pa.) 162.

——— (writ of, will lie upon judgment of non-suit). 2 Halst. (N. J.) 289.

ERROR AND DELAY, (in telegraphing). 45 N. Y. 744, 752.

ERROR BOOK, (what it should contain). 13 Wend. (N. Y.) 575.

ERROR CORAM NOBIS, (distinguished from "error coram vobis"). 16 Wend. (N. Y.) 48, 50.

Error fucatus nuda veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error (2 Co. 73): Varnished error is in many things more probable than naked truth; and very frequently error conquers truth by reasoning.

Error juris nocet: Error of law injures. A mistake of the law has an injurious effect, *i. e.* the party committing it must suffer the consequences.

ERROR NOMINIS.—A mistake of detail in the name of a person; used in contradistinction to error *de personâ*, a mistake as to identity.

Error nominis nunquam nocet, si de identitate rei constat: A mistake in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself [where the thing intended is certainly known].

Error, qui non resistitur, approbatur (Doct. & S. c. 70): An error which is not resisted, is approved.

Errores ad sua principia referre, est refellere (3 Inst. 15): To refer errors to their principles, is to refute them.

Errores scribentis nocere non debent (Jenk. Cent. 324): The mistakes of the writer ought not to harm.

ERRORS, (how release of, should be pleaded). Cro. Jac. 243.

ERRORS AND WRITS OF ERROR, (release of all). Shep. Touch. 342.

ERRORS EXCEPTED.—A phrase appended to an account stated, in order to excuse slight mistakes or oversights. Often written "E. & O. E." meaning errors and omissions excepted.

ERRORS OF FACT, (in code of practice). 22 Barb. (N. Y.) 147; 53 *Id.* 438, 440; 7 How. (N. Y.) Pr. 64; 8 *Id.* 377; 36 *Id.* 140, 142.

ERTHMIOTUM.—A meeting of the neighborhood to compromise differences amongst themselves; a court held on the boundary of two lands.

Erubescit lex filios castigare parentes (8 Co. Litt. 116): The law blushes when children correct their parents.

ESBRANCATURA.—Cutting off branches or boughs in forests, &c. Hov. 784.

ESCALDARE.—To scald. It is said that to scald hogs was one of the ancient tenures in serjeanty.

ESCAMBIO.—SPANISH: *cambier*, to change.

A license granted to an English merchant to make over bills of exchange to another beyond the sea. Abolished by 59 Geo. III. c. 49, § 11.

ESCAMBIUM.—An old English law term, signifying exchange.

ESCAPE.—(1) The departure or deliverance out of custody of a person who is lawfully in confinement before he is discharged in due course of law; (2) any liberty given to a person imprisoned beyond that which is allowed by law. In the former sense an escape is sometimes called "actual," and in the latter "constructive."

§ 2. Voluntary escape is where a person knowingly permits one in his lawful custody to regain his liberty otherwise than in due course of law.

§ 3. Negligent escape is where a person by the neglect of any duty, or by ignorance of law, permits one in his lawful custody to regain his liberty otherwise than in due course of law.

§ 4. In civil cases at common law, the officer is liable in damages to the plaintiff if the escape is from final process, and

where there is a voluntary escape from confinement on mesne process; but in case of a negligent escape from custody on mesne process the officer will be released from liability if he retake the prisoner.

§ 5. In criminal cases where the escape is voluntary, the degree of the officer's offence varies at common law with that of which the escaped prisoner was guilty, and where the escape is negligent the officer is guilty of a misdemeanor. Whether the escape be voluntary or negligent the prisoner is, at common law, indictable for a misdemeanor.

ESCAPE, (defined). 5 Mass. 310.

——— (voluntary and negligent defined). 4 Johns. (N. Y.) 45, 47.

——— (what is not). Penn. (N. J.) 776.

ESCAPE WARRANT.—A process addressed to all sheriffs, &c., throughout England, to retake an escaped prisoner, even on a Sunday, and commit him to proper custody. 1 Anne c. 16.

ESCAPIO QUIETUS.—Delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land.—*Jacob.*

ESCAPIUM.—That which comes by chance or accident.—*Cowell.*

ESCEPPA.—A measure of corn.—*Cowell.*

Eschaeta derivatur a verbo Gallico eschoir, quod est accidere, quia accidit domino ex eventu et ex insperato (Co. Litt. 93): Escheat is derived from the French word *eschoir*, which signifies to happen, because it falls to the lord from an event and from an unforeseen circumstance.

Eschaetæ vulgo dicuntur quæ decidentibus iis quæ de rege tenent, cum not existit ratione sanguinis hæres, ad fiscum relabuntur (Co. Litt. 13): Those things are commonly called escheats which revert to the exchequer from a failure of issue in those who hold of the king, when there does not exist any heir by consanguinity.

ESCHEAT.—NORMAN-FRENCH: *eschete*, from *eschoir*, to fall to (in the sense of a wind-fall); LATIN: *cadere*. Brit. 28 a; Litt. § 682; Littre s. v.

§ 1. Lands falling by accident to the lord of whom they are holden (Co. Litt. 13 a, 92 b), or to the crown. It is derived from the feudal rule, that where an estate in fee-simple comes to an end, the land reverts to the lord by whose ancestors or predecessors the estate was originally created. (Wms. Real Prop. 126; except in the case

of high treason, when the land always escheated to the crown; Co. Litt. 13 a.) At the present day, in England, seignories in freehold land are of no practical value, and the evidence of them has generally been lost; so that where an escheat takes place the land in almost all cases goes to the crown as the ultimate lord of all lands in England. (Wms. Real Prop. 128; Co. Litt. 1 a.) In the United States the State is vested with the rights of the feudal lord, and the land reverts to it where there is no one competent to inherit, after office found. This subject is, however, in most of the States, regulated by statute.

§ 2. "An escheat doth happen two manner of wayes—*aut per defectum sanguinis*, i. e. for default of heir; *aut per delictum tenentis*, i. e. for felony." (Co. Litt. 13 a.) Escheat *propter delictum tenentis* takes place where a person is outlawed for felony, upon which his blood is corrupted; that is to say, he becomes incapable of holding land, or of inheriting it, and at common law it therefore escheats to the lord. Formerly, in England, judgment of death for felony caused an escheat in the same manner as outlawry; but this has recently been abolished (Stat. 33 and 34 Vict. c. 23; see AT-TAINDER), as has also the rule that a person could not trace descent to land through an ancestor who has been attainted of treason or felony, so that the land escheated to the lord. Stat. 3 and 4 Will. IV. c. 106, § 10; 1 Steph. Com. 445.

§ 3. Escheat is not properly a purchase in the technical sense of the word, for the land thus acquired by the lord descends as the seignory would have descended, into the place of which it comes. Burt. Comp. 325; Hargrave's note to Co. Litt. 18 b. See INQUEST OF OFFICE; PURCHASE; SEIGNORY; TITLE.

ESCHEAT, (defined). 2 Bl. Com. 244.

——— (how arises). 9 Mass. 364, 368.

——— (title by). 1 Chit. Gen. Pr. 279.

ESCHEATOR.—"An ancient officer, so called because his office is properly to look to escheats, wardships and other casualties belonging to the crowne." Co. Litt. 13 b; Cox Inst. 685. See INQUEST OF OFFICE.

ESCHECCUM.—A jury, or inquisition.—*Mat. Par.*

ESCHIPARE.—To build or equip.—*Du Cange.*

ESCOBAR.—A great Spanish writer on points of casuistry.

ESCOT.—A tax anciently paid in boroughs and corporations towards the support of the community, which was called "scot and lot."

ESCRIBANO.—A Spanish law term, denoting a public officer who was authorized by law to write out and attest all judicial proceedings, and also all contracts between private persons.

ESCRITURA.—A term in the Spanish law, applied to a deed written by the public *escribano*, or under the seal of some authorized person.

ESCROW.—Apparently from NORMAN-FRENCH: *escrit* (Britt. 98b); LATIN: *scriptum*, a writing.

A writing sealed and delivered to a stranger (*i. e.* a person not a party to it), to be held by him until certain conditions be performed, and then to be delivered to take effect as a deed. It is said that, to make the writing an *escrow*, the word "escrow" must be used in delivering it, but whether this is so at the present day is doubtful. Shep. Touch. 58; Co. Litt. 36a.

Escrow, (defined). 5 Conn. 86, 92, 555, 559; 34 *Id.* 92, 103.

— (delivery of a bond in). 4 Cranch (U. S.) 219.

— (when bond is not). 5 Cranch (U. S.) 351.

— (delivery of deed in). 57 Ala. 437; 14 Conn. 271; 2 Mass. 447, 452; 8 *Id.* 230; 3 Gr. (N. J.) 155; 2 Johns. (N. Y.) 248; 13 *Id.* 285; 4 Paige (N. Y.) 1; 6 Wend. (N. Y.) 666; 10 *Id.* 310; 23 *Id.* 43; 2 Watts (Pa.) 359; 4 *Id.* 180; 4 Wheel. Am. C. L. 237; 4 Barn. & Ald. 440; 9 Co. 137a; 1 Dyer 34b.

— (when deed is not). 14 Ga. 145, 154; 26 N. Y. 483, 492.

— (co-obligor may hold a bond as an). 34 Conn. 92.

— (party to a bond cannot hold it as an). 3 Halst. (N. J.) 25.

— (promissory note delivered directly to the promisee cannot be). 1 Root (Conn.) 87.

ESCUAGE.—NORMAN-FRENCH: *escuage* (late LATIN: *scutagium*), from *escu*; LATIN: *scutum*, a shield. Loysel Gloss. s. v.

§ 1. Tenure by *escuage* was one of the varieties of tenure by knight's service. It imposed on the tenant the duty of accompanying the king to war for forty days, or of sending a substitute, or of paying a sum of money, which was assessed by parliament after the expedition or "voyage royal."

§ 2. This payment was also called "*escuage*, or *escuage* uncertain," to distinguish it from *escuage* certain, which was one of the services of which socage tenure might consist. Thus, if a man held land by the service of paying to his lord half a mark or other fixed sum for *escuage*,

this was *escuage* certain, and the tenure was socage and not knight's service. Litt. §§ 95 *et seq.*, 120; Co. Litt. 68b *et seq.* See TENURE.

§ 3. *Escuage* was abolished by 12 Car. II. c. 24, and had fallen into disuse long before, for there is no instance of parliament's assessing it since the reign of Edward II.

ESCURARE.—To scour or cleanse.—*Cowell.*

ESGLISE, or EGLISE.—A church.—*Jacob.*

ESKETORES.—Robbers, or destroyers of other men's lands and fortunes.—*Cowell.*

ESKIPPAMENTUM.—Skippage; tackle or ship furniture.—*Cowell.*

ESKIPPER.—To ship.—*Jacob.*

ESKIPPESON.—Shipping or passage by sea.—*Cowell.*

ESLISORS.—See ELISORS.

ESNE.—A hireling of servile condition.

ESNECY.—LATIN: *ænesia*.

A private prerogative allowed to the eldest coparcener, where an estate descends to daughters for want of an heir male, to choose after the inheritance is divided.—*Fleta*, l. 5, c. x.

ESPECIAL PRIVILEGE, (meaning of). 1 Dak. T. 113, 118.

ESPERA.—The period fixed by a competent judge within which a party is to do certain acts, as, *e. g.* to effect certain payments, present documents, etc.; and more especially the privilege granted by law to debtors, allowing them certain time for the payment of their indebtedness.—*Bowyer.*

ESPERONS.—Spurs. 7 Co. 13.

ESPLEES.—LATIN: *expletivæ*.

The products of land; as the hay of meadows, herbage of pasture, corn of arable land, rents, services, &c.; also the lands, &c., themselves.—*Termes de la Ley.*

ESPOUSALS.—LATIN: *sponsalia*; FRENCH: *espouse*.

The act of contracting or affiancing a man and woman to each other; the ceremony of betrothing.

ESPURIO.—A Spanish law term for a spurious child.

ESQUIRE.—Strictly speaking, the only persons entitled to the description of esquire, in England, are—(1) the eldest sons of knights, and their eldest sons in perpetual succession; (2) the eldest sons

of younger sons of peers in like succession; (3) esquires created by the crown's letters-patent or other investiture, and their eldest sons; (4) esquires by virtue of their office, such as justices of the peace and barristers-at-law; (5) foreign peers. Every knight of the bath has the privilege of creating three esquires at his installation. (2 Steph. Com. 616.) In the United States the term is applied to officers of many kinds, and to private individuals, but is a mere title of courtesy.

ESQUIRE, (meaning of). 3 Serg. & R. (Pa.) 396, 401; 15 *Id.* 36.

—— (in a declaration). 5 Watts (Pa.) 331.

—— (in an indictment). 2 Car. & P. 230.

ESSARTUM.—Woodlands turned into tillage by uprooting the trees and removing the underwood.

ESSE, IN, (a child *en ventre sa mere* is). 3 Johns. (N. Y.) Cas. 18, 24; 2 Paige (N. Y.) 35; 4 *Id.* 47, 53; 5 Serg. & R. (Pa.) 38; 7 Wheel. Am. C. L. 528; 2 H. Bl. 399.

ESSENCE OF THE CONTRACT.

—A provision in a contract is said to be "of the essence of the contract," when compliance with it was known by both parties, at the time of entering into the contract, to be of such importance that performance of the contract without strict compliance with it may be of no avail; as where the subject-matter of the contract is required for immediate use, or is of a terminable or fluctuating character or value. (Leake Cont. 448.) Where a contract limits a time for the performance of an act, the promisor has the right of performing it within a reasonable time after the date, unless it appears that performance within the time was intended to be of the essence of the contract; hence it is usual in such cases to insert an express condition to that effect. As to time being of the essence of the contract in sales of realty, *see* Parkin v. Thorold, 16 Beav. 59; Chit. Cont. 283; Leake Cont. 447.

ESSENDI QUIETUM DE THEOLONIO.—*See* DE ESSENDO QUIETUM DE TOLONIO.

ESSOIN, or ESSOIGN.—In the old books, means an excuse for not appearing in court to defend an action, and as the first day of term was the day for hearing such excuses it was called the "essoin-day." Tidd Pr. 125.

ESSOIN DE MALO LECTI.—*See* DE ESSONIO DE MALO LECTI.

ESSOIN DE MALO VILLÆ.—Is when the defendant is in court the first day; but gone without pleading, and being afterwards surprised by sickness, &c., cannot attend, but sends two essoiners, who openly protest in court that he is detained by sickness in such a village, that he cannot come, *pro lucrari* and *pro perdere*; and this will be admitted, for it lieth on the plaintiff to prove whether the essoin is true or not.—*Jacob*.

ESSOIN ROLL.—The roll upon which the essoins were entered, together with the day of adjournment.

Est aliquid quod non oportet etiam si licet; quicquid vero non licet certe non oportet (Hob. 159): There is that which is not proper, even though permitted; but whatever is not permitted is certainly not proper.

Est ipsorum legislatorum tanquam viva vox; rebus et non verbis legem imponimus (10 Co. 101 b): [The voice] of legislators themselves is like the living voice; we impose law upon things, not upon words.

Est quiddam perfectius in rebus licitis (Hob. 159): There is something more perfect in things allowed.

ESTABLISH, (defined). 49 N. H. 230, 237; 14 N. Y. 356, 361.

—— (a market). 33 Pa. St. 202.

—— (in United States constitution). 1 Story Const., § 454.

ESTABLISH AND REGULATE, (a market, in city charter). 14 N. Y. 356, 361.

ESTABLISH JUSTICE, (in preamble to constitution of United States). 2 Dall. (U. S.) 419, 475.

ESTABLISH POST OFFICES AND POST ROADS, (in constitution of United States). 4 Wheat. (U. S.) 316, 417.

ESTABLISHED, (defined). 11 Gray (Mass.) 306, 308.

—— (in a statute). 1 Barn. & Ad. 861.

—— (in Louisiana Civil Code, § 1079). 18 La. Ann. 49.

ESTABLISHED BY A JURY, (in a statute). 126 Mass. 503, 504.

ESTABLISHED COUNTY, (in a statute). 54 Ala. 639.

—— (distinguished from "organized" county). 25 Minn. 215, 219.

ESTABLISHING A SCHOOL, (in a will). 2 Cox Ch. 387.

ESTABLISHMENT, or ESTABLISHMENT.—A term applied, in the old English law, to an ordinance or statute, particularly to acts passed during the reign of Edward I.

ESTABLISHMENT, (in a will). 27 Barb. (N. Y.) 260, 264.

ESTABLISHMENT OF DOWER.—The assurance of dower made by the husband, or his friends, before or at the time of the marriage. Brit. c. 102, 103.

ESTABLISHMENT OF WILLS.—Formerly where the validity of a will disposing of real estate was disputed, or likely to be disputed by the heir-at-law, or any other person, the only remedy open to the devisee was to bring a suit in equity against the person disputing the will, called "a suit to establish the will," so as to prevent him from contesting it in future. In such a suit the execution of the will, and the other requisites to its validity, were proved (*see* DEVISAVIT VEL NON). In England, probate in solemn form is now conclusive as to the validity of the will as regards real estate, (Stat. 20 and 21 Vict. c. 77, § 66;) and proceedings to establish wills in chancery have consequently become obsolete. Dan. Ch. Pr. (4 edit.) 226, 812; Snell Eq. 536.

ESTACHE.—FRENCH: *estacher*, to fasten.

A bridge or stank of stone or timber.—*Cowell*.

ESTADAL.—A term used in Spanish America, denoting a measure of land equal to sixteen square yards.

ESTADIA.—A Spanish law term, for the time for which a person is liable to pay demurrage when, having chartered a vessel, or being compellable to receive the cargo, he delays executing the contract.

ESTANQUES.—Wears or kiddles in rivers.

ESTATE.—NORMAN-FRENCH: *estat* (Brit. 270a; from the Latin: *status*. Estate was formerly also a verb active, meaning to create, limit, or grant an estate. *See* Compl. Clerk, 366, 445.

§ 1. In its widest sense, estate denotes the condition or circumstance of a person or a class of persons; hence its use in the expression, "the three estates," or estates of the realm; *i. e.* the lords spiritual, the lords temporal, and the commons of England. 1 Bl. Com. 153; 3 Hallam M. A. 105; Block, Dict. v. *Elat*. *See* PARLIAMENT.

§ 2. More usually, however, estate signifies—(1) the condition or circumstance in which a person stands with regard to property in which he has an interest (Litt. § 347; 2 Bl. Com. 103), and, by extension, (2) the interest itself. In this sense estate means certain varieties or modes of ownership, especially in land, the English rule being that no person can be the absolute owner of land; in theory, he can only have an estate or limited interest in it. (Wms. Real Prop. 17. *See* TENURE.) But it is otherwise in the United States, where ownership of land in fee is allodial (*q. v.*)

These limited interests are of the following kinds—

§ 3. **Legal estates.**—Where a person

has such an estate in property that he is entitled to the possession or enjoyment of it (either in present or in future) against all the world, or against all the world except one or more specified persons, he is said to have a legal estate in it, as opposed to an equitable or beneficial estate. (*Infra*, § 13.) He may be entitled to it for his own benefit, or as trustee for some one else. *See* TRUSTEE.

Legal estates are divisible as follows—

Estates in land of freehold tenure. "Freehold" in the sense of tenure must not be confounded with "freehold" in the sense of an estate of a certain quantity. *See* FREEHOLD.

§ 4. **Estates in freehold land.**—With reference to their quantity, or the extreme limit of their duration, (Co. Litt. 18a; 2 Bl. Com. 103,) estates are either freehold (*q. v.*) or less than freehold. Estates of freehold again are either (1) estates of inheritance, which include estates in fee-simple, estates tail, and estates in frank-marriage (*see* those titles); or (2) estates not of inheritance, which are either (a) conventional, *i. e.* created by the act of the parties, including estates for life and estates *pur autre vie* (*see* TENANT FOR LIFE; QUASI-TAIL); or (b) legal, *i. e.* created by construction or operation of law; to this class belong the estates of a "tenant in tail after possibility of issue extinct," and of tenants by the curtesy, and in dower (*q. v.*)

§ 5. **Estates less than freehold** are either (1) certain, namely, estates for years (*see* TENANT FOR YEARS; TERM), or (2) uncertain, namely, estates at will, by sufferance, statute merchant, statute staple and elegit, and a few other interests without specific names, *e. g.* under a devise of land to executors to pay debts. Co. Litt. 42a. *See* CHATTELS.

With reference to their qualities, estates are either absolute, determinable or conditional.

§ 6. **Absolute estate.**—An estate is said to be absolute when nothing but its quantity is indicated; thus, a conveyance to a man and his heirs gives him a fee-simple absolute.

§ 7. **Determinable estate.**—An estate is determinable when by the terms of its limitation it may either continue as long

as if it were absolute, or determine before that period; thus, a conveyance to A. during her widowhood, gives her an estate for life determinable on her marrying again.

§ 8. **Conditional estate.**—A conditional estate is one which has a condition annexed to it, which may defeat it before its natural termination; a familiar instance of a conditional estate is that created by the old-fashioned form of mortgage, and the estate of a lessee under an ordinary lease, with a proviso for re-entry on non-payment of rent, &c. (Pres. Est. 44; Leake 214.) As to the various kinds of conditions, see that title. Estates which depend for their creation on the performance of a condition precedent are not generally called conditional estates, but contingent remainders or executory interests (*q. v.*) Estates in fee are subject to a peculiar division with reference to conditions, as to which see FEE; LIMITATION.

§ 9. **In possession—In expectancy.**—With reference to the time of their enjoyment, estates are either in possession or expectancy. An estate in possession (or an immediate estate) gives a present right of present enjoyment, while an estate in expectancy is one which cannot be enjoyed until a future time. An estate of freehold is said to be in possession, although it is subject to an existing prior chattel interest. Estates in expectancy include reversions, remainders and future interests (*q. v.*) (1 Steph. Com. 313; Burt. Comp. R. P. § 833.) Every estate which precedes a reversion or remainder is also called a "particular estate." (Co. Litt. 22b.) Thus, if land is granted to A. for life, with remainder to B. and his heirs, A. has a particular estate, and B. a reversionary estate.

§ 10. **Vested—Contingent.**—With regard to the certainty of their enjoyment, estates are either vested or contingent. An estate is said to be vested in possession when the tenant has a present right to the present enjoyment; vested in interest, when he has a present fixed right to the future enjoyment, and contingent, when his right of enjoyment is to accrue on an event which is uncertain; in other words, when he has an estate in expectancy,

which may or may not take effect in possession. Fearn Rcm. 1. See EXECUTORY INTEREST; REMAINDER; REVERSION; VEST.

§ 11. **In severalty, joint tenancy, &c.**—An estate held by one person alone is called an "estate in severalty" or "in sole tenancy;" estates held by two or more persons together are of the following kinds: tenancy by entireties, coparcenary, joint tenancy and tenancy in common. (See those titles.) To this head may also be referred those estates which are sometimes in one person or in one place, and *alternis vicibus* in another (Co. Litt. 4a); they do not seem to occur at the present time, except in the case of lot-mead or shifting severalties. See INHERITANCE, § 5; SEVERALTY.

§ 12. **Customary estates** are those which exist, by virtue of a custom, in land forming part of a manor, as in the case of copyholds and customary freeholds (*q. v.*) As a rule they are similar to estates in freeholds. Thus, a copyholder may have a customary fee-simple, an estate for life, for a term of years, in joint tenancy, &c., and, if there is a special custom to that effect, a customary estate tail; if there is no such custom, then a gift of land to A. and the heirs of his body creates a customary fee-simple conditional at the common law. Burt. Comp. R. P. § 1284; Elt. Copyl. 32. See FEE.

§ 13. **Equitable estates** are those which were formerly recognized only in courts of equity. (Burt. Comp. R. P. § 1358; see Jickling's Analogy, *passim*. See EQUITABLE; EQUITY.) The main differences between legal and equitable estates are that the latter can exist to a certain extent in personalty as well as realty, and that they are free from many of the restrictions and incidents attached by the common law to legal estates in land. Equitable estates may be divided as follows: (1) those which are analogous to legal estates, *e. g.* equitable estates in fee-simple, in tail, for life, in joint tenancy, &c. In these cases the legal estate in the property is vested in one person, and the beneficial or equitable estate in another, as where land or stock is given to trustees upon trust for A. and B. during their lives, and, after the death of the survivor, to C.; here A. and B. have an equitable joint life estate or interest, and C. has an equitable reversion or reversionary interest; (2) those having no corresponding estates at

law, *e. g.* equities of redemption. Burt. Comp. R. P. § 1458.

§ 14. Estate also signifies "property." Thus, we speak of real and personal estate, of partnership estate, trust estate, a married woman's separate estate, &c., especially with reference to questions of administration, as in the case of the estate of a deceased person, a bankrupt or a dissolved partnership. See ASSETS.

§ 15. From its use in these cases, estate has acquired the sense of a juridical or fictitious person, as when we say that a debt is due to the estate of a bankrupt or deceased person, or speak of an estate being insolvent, or of its being a co-contractor in a business. (*McClellan v. Hennard*, L. R. 9 Ch. 336.) The idea is, that the estate represents or continues the *persona* of the individual to whom it belonged.

ESTATE, (defined). 33 Ark. 824; 55 Me. 284, 287; 10 Mass. 323, 324; 2 Cow. (N. Y.) 246, 301; 12 N. Y. 519, 527; Busb. (N. C.) Eq. 141; 4 Kent Com. 4; 2 Bl. Com. 103; 1 Chit. Gen. Pr. 238; Pres. Est. 20.

— (as confined to real property). 16 Conn. 1, 10.

— (does not include "rights in action"). 1 Bush (Ky.) 381; 35 Miss. 25; 18 Pa. St. 249. — (embraces both "realty" and "personalty"). 1 Sandf. (N. Y.) Ch. 324, 334.

— (what it does not embrace). 25 Me. 18. — (in a deed). 16 Johns. (N. Y.) 110; 1 Hob. 168, 170; Shep. Touch. 97.

— (in a statute). 9 Mass. 209, 211. — (in a will). 2 Cranch (U. S.) C. C.

640; 3 *Id.* 97; 1 Dall. (U. S.) 226; 1 Pet. (U. S.) 585; 4 Day (Conn.) 368; 4 Harr. (Del.) 177; 9 Gray (Mass.) 171; 32 Miss. 107; 2 Beas. (N. J.) 138; 2 Gr. (N. J.) 53, 63, 68, 73; 1 Halst. (N. J.) 349, 352; 2 Stockt. (N. J.) 51; 6 Johns. (N. Y.) 185; 11 *Id.* 365; 17 Wend. (N. Y.) 393, 398; Cam. & N. (N. C.) 202, 204; 2 Binn. (Pa.) 13, 20; 3 *Id.* 476, 494; 4 Rawle (Pa.) 75, 81; 11 Serg. & R. (Pa.) 252, 254; 12 *Id.* 54; 6 Watts (Pa.) 18, 21; 3 Yeates (Pa.) 187; 8 R. I. 384; 3 Desaus. (S. C.) 80, 83; 4 McCord (S. C.) 60; 26 Vt. 260; 1 Call (Va.) 127; 3 *Id.* 306, 308; 1 Munf. (Va.) 539, 542; 3 Rand. (Va.) 191; 1 Wash. (Va.) 96; 14 Am. Dec. 576 *n.*; 4 Wheel. Am. C. L. 375, 436; 7 *Id.* 530; 8 *Id.* 412; Andr. 210; 2 Atk. 37; 3 *Id.* 486 *n.* (1); 1 Barn. & Ald. 550; 3 Barn. & C. 870; 2 W. Bl. 938; 1 Bos. & P. 243, 247; 2 Bos. & P. N. R. 343; 5 Burr. 2638; Cas. t. Talbot 157; 1 Dru. & W. 198; 5 East 548, 554; 8 *Id.* 141; 13 L. J. Ch. n. s. 97, 205; 2 Ld. Raym. 1325; 6 Mod. 106; 3 Moo. 565; 2 P. Wms. 335; 3 *Id.* 295; 6 Taunt. 317, 410; 1 T. R. 411; 2 *Id.* 656; 4 *Id.* 89; 5 *Id.* 558, 562; 6 *Id.* 30, 34; 8 *Id.* 64, 67, 497, 503, 547, 600; 3 Ves. 339; 7 *Id.* 541, 545; 8 *Id.* 604; 9 *Id.* 137; 18 *Id.* 193, 195; 3 Ves. & B. 160; Willes 293, 296; 1 Chit. Gen. Pr. 249; Com. 337; 4 Com. Dig. 165; 8 *Id.* 435; 2 Pres. Est. 116, 122.

ESTATE, (includes "choses in action"). 12 Ired. (N. C.) L. 61, 62.

— (in nuncupative wills act, does not include "land"). 64 N. C. 52, 54.

— (synonymous with "succession"). 9 La. 135; 28 La. Ann. 180.

— (not synonymous with "property"). 12 Ired. (N. C.) L. 61, 62.

ESTATE AD REMANENTIAM.—An estate in fee-simple. Glanv. l. 7, c. 1.

ESTATE, ALL HIS, (in a will). 15 Johns. (N. Y.) 169.

ESTATE, ALL MY, (in a will). 1 Har. & M. (Md.) 452, 455; Penn. (N. J.) 598, 601; 12 Johns. (N. Y.) 389; 2 Desaus. (S. C.) 422, 430; 4 Wheel. Am. C. L. 396; 2 W. Bl. 1301, 1307; 7 East 259; 12 Mod. 593, 594; 4 Taunt. 176; 1 T. R. 411; 8 *Id.* 497, 502; 2 Ves. & B. 222; 4 Com. Dig. 154.

ESTATE, ALL HIS REAL AND PERSONAL, (in a devise). 17 Mass. 68.

ESTATE, ALL HIS, WHETHER REAL OR PERSONAL, (in a will). 5 Pick. (Mass.) 112.

ESTATE, ALL MY, BOTH REAL AND PERSONAL, (in a will). 4 Wheel. Am. C. L. 397.

ESTATE, ALL MY, IN LAW AND EQUITY, (in a will). 1 Ves. 201, 205.

ESTATE, ALL MY LAND AND, (in a will). 2 P. Wms. 523.

ESTATE, ALL MY PERSONAL, (in a will). 13 Ves. 444, 452.

ESTATE, ALL MY REAL, (in a devise). 18 Pick. (Mass.) 537, 539; 7 Jur. 482.

ESTATE, ALL MY REAL AND PERSONAL, (in a will). 3 Harr. (N. J.) 210, 214; 16 Johns. (N. Y.) 537; 12 Wend. (N. Y.) 538, 541.

ESTATE, ALL MY TEMPORAL, (in a will). 1 Wils. 333; 3 *Id.* 414.

ESTATE, ALL THE, (in a statute). 3 Pet. (U. S.) 99, 130.

— (in a will). 2 Whart. (Pa.) 283, 285.

ESTATE, ALL THE REST AND RESIDUE OF MY, (in a will). 1 H. Bl. 223.

ESTATE, ALL THE REST OF MY, (in a will). 2 Chit. 558.

ESTATE AND EFFECTS, (in a will). 15 East 394; 13 L. J. Ch. n. s. 345, 348; 1 Russ. & M. 250; 1 Swanst. 66, 72; 6 T. R. 610; 8 Ves. 584, 588; 1 Ves. & B. 406.

ESTATE AT SUFFERANCE.—See TENANT AT SUFFERANCE.

ESTATE AT SUFFERANCE, (defined). 11 Wend. (N. Y.) 616, 621.

ESTATE AT WILL.—See TENANT AT WILL.

ESTATE AT WILL, (defined). 6 Barb. (N. Y.) 116, 129.

ESTATE BY ELEGIT.—See ELEGIT.

ESTATE BY ENTIRETY, (defined). 18 Am. Dec. 377 *n.*

ESTATE BY STATUTE MERCHANT.—See STATUTE MERCHANT.

ESTATE BY STATUTE STAPLE.—*See* STATUTE STAPLE.

ESTATE BY THE CURTESY.—*See* CURTESY.

ESTATE FOR LIFE.—*See* TENANT FOR LIFE.

ESTATE FOR LIFE, (when created). 8 Jur. 526; 5 Man. & G. 628; 12 Mees. & W. 279; 6 Scott 670; 11 Sim. 536.

ESTATE FOR YEARS.—*See* TENANT FOR YEARS.

ESTATE FOR YEARS, (defined). 22 Ind. 122.
ESTATE, FREEHOLD, (in a will). 1 Brod. & B. 72.

ESTATE IN COMMON.—*See* TENANCY IN COMMON.

ESTATE IN COPARCENARY.—*See* COPARCENARY.

ESTATE IN DOWER.—*See* DOWER.

ESTATE IN EXPECTANCY.—*See* ESTATE, § 9.

ESTATE IN FEE OR FOR LIFE, (imports legal estates only). 14 N. Y. 32, 39.

ESTATE IN FEE-SIMPLE.—*See* FEE.

ESTATE IN FEE-SIMPLE, (when created). 5 Scott 955.

ESTATE IN FEE TAIL.—*See* ESTATE TAIL.

ESTATE IN JOINT TENANCY.—*See* JOINT TENANCY.

ESTATE IN LAND, (defined). 17 Cal. 226, 231; 2 Mass. 284, 290.

ESTATE IN POSSESSION.—*See* ESTATE, § 9.

ESTATE IN POSSESSION, (defined). 19 Mich. 116, 123.
— (in Comp. L. § 6274). 44 Mich. 551.

ESTATE IN REMAINDER.—*See* REMAINDER.

ESTATE IN REVERSION.—*See* REVERSION.

ESTATE IN SEVERALTY.—*See* ESTATE, § 11.

ESTATE IN VADIO.—An estate in pledge. *See* MORTGAGE.

ESTATE OF A DECEASED PERSON, (in a statute). 54 Miss. 554.

ESTATE OF INHERITANCE.—*See* ESTATE, § 4.

ESTATE OF THE INFANTS, (in a bond). 13 Vt. (N. J.) 15, 18.

ESTATE OR INTEREST, (in a statute). Amb. 155, 216.

ESTATE PER AUTRE VIE.—*See* TENANT FOR LIFE.

ESTATE PER AUTRE VIE, (in a statute.) Willes 500, 505.

ESTATE, PERSONAL, (in a will). 1 Root (Conn.) 180; 1 N. H. 350; 2 Bos. & P. 303, 309; 12 L. J. Ch. n. s. 169; Pr. Ch. 392; 2 Vern. 688; 4 Ves. 76; 2 Com. Dig. 658; Toll. Ex. 302.

ESTATE, PERSONAL AND LANDED, (in a will). 10 Cl. & F. 508.

ESTATE, REAL, (in a statute). 14 Mass. 20, 26; 15 *Id.* 434, 445; 17 Wend. (N. Y.) 674.

ESTATE, REAL AND PERSONAL, (in a will). 9 Cush. (Mass.) 122; 13 Johns. (N. Y.) 537; 3 Johns. (N. Y.) Ch. 307; 22 Wend. (N. Y.) 137, 138; Cas. t. Talbot 145; 8 Jur. 329; 3 Man. & G. 327; 3 Scott N. R. 665; 7 Taunt. 35.

— (what includes). 14 Mass. 88, 92.

ESTATE, RESIDUE OF, (in a will). 12 L. J. Ch. n. s. 259.

ESTATE, REST OF MY, (in a will). 8 Bing. 323, 328.

ESTATE, RIGHT, TITLE AND INTEREST, (in a conveyance). 1 East 502, 506.

ESTATE TAIL.—NORMAN-FRENCH: *fee taille, taylor* (Britt. 89 a, 216 b); LOW LATIN: *feodum talliatum*, from *tallier*, *talliare*, to cut or "limit to some certain inheritance." Litt. § 18.

§ 1. An estate in lands or tenements, created by a conveyance or devise to a person and his descendants, or the "heirs of his body," as they are technically called. (*See* HEIR, § 9.) Such an estate will, if left to itself, descend on the death of the first owner to his children, grandchildren and more remote descendants, but not to his ascendants or collateral heirs; so that, if he dies without issue, or any of his descendants die without issue, and there is no other descendant of the first owner living, the estate will, if left alone, come to an end, and the land will pass to the reversioner or remainderman. The owner for the time being of such an estate is called a "tenant in tail."

§ 2. General, and special.—An estate tail may be either general, as where land is given to A. and the heirs of his body without more, in which case it descends to such of his heirs as are descended from him in the same manner as an estate in fee-simple descends to the issue of the last purchaser; or, special, when it is restrained to certain heirs of his body, as where land is given to B. and the heirs of his body by a particular wife; here none can inherit but such as are his children by that particular wife, or descended from his children by her. Litt. § 13. Co. Litt. 19 b.

§ 3. Each of these kinds may also be either in tail male, where the land is limited to the heirs male of the donee, so that it cannot descend to any but males who can trace their descent through male descendants from the donee (*i. e.* to sons, sons of sons, and so on); or, in tail female, where it can only descend to females and female descendants of females (daughters, daughters of daughters, and so on). Accordingly, a man may have an estate in tail male special, *i. e.* descendible only to his heirs male by a particular wife, or the like. 2 Bl. Com. 114.

§ 4. Gift in tail to two persons.—Where land is given to two persons and the heirs of their bodies, then if they can by any possibility marry, either immediately or at a future time, they have an estate in special tail, limited to their own issue. If there is no possibility of their marrying, they have a joint estate for life and several inheritances in tail, *i. e.* the land is divided on the death of the survivor, one-half going to the issue of each tenant for life, and the issue are tenants in common in tail. Co. Litt. 20 b, 25 b; Litt. § 283.

§ 5. Statute de donis.—Estates tail, in freehold land, are derived from the statute of Westminster the Second (13 Edw. I.), called *de donis conditionalibus*. Before this statute, a gift of land to a man and the heirs of his body operated to create an estate in fee conditional on his having issue; as soon as he performed the condition by having issue, his estate practically became an absolute estate in fee-simple. (*See* FEE.) The statute *de donis* enacted that in such cases the land should go to the issue of the donee, or, on failure of his issue, should revert to the donor. (Co. Litt. 18 b; 1 Steph. Com. 240.) The act only applies to lands and tenements, and, therefore, does not include such hereditaments as annuities, which are neither lands nor tenements. *See* ANNUITY.

§ 6. Fines and recoveries.—In course of time modes were invented of barring estates tail by means of fictitious proceedings called fines and common recoveries (*see* those titles), so that the estate of a tenant in tail might be converted into a fee-simple absolute not only against his issue, but also against the donor or reversioner in tail. By statutes passed in the reigns of Henry VIII. and subsequent sovereigns, estates tail were further assimilated to estates in fee-simple, and now by the Fines and Recoveries Act (3 and 4 Will. IV. c. 74), every tenant in tail may, by a disentailing assurance (*q. v.*), bar the entail as against his own issue, and may, with the consent of the protector of the settlement (if any), bar it as against the reversioner in tail, and thus convert it into an estate in fee-simple. (*See* ENLARGEMENT; PROTECTOR.) This act and the Settled Estates Act (*q. v.*) also contain provisions enabling tenants in tail to grant effectual leases at a rack-rent for certain terms.

§ 7. Copyholds.—The entail of copyholds depends upon the custom of each manor. In some manors there is no custom to entail, and in these manors a surrender of copyholds to the use of A. and the heirs of his body gives him a conditional customary fee, corresponding to a fee-

simple conditional at the common law (*see* FEE). In some manors there is a custom to entail, so that a surrender to the use of A. and the heirs of his body gives him a customary estate tail, which may be barred by a simple surrender, the consent of the protector, if any, being entered on the court rolls. Wms. Seis. 164; Wms. R. P. 364.

§ 8. Equitable entail.—An equitable entail is where lands or tenements are vested in trustees in trust for a person as tenant in tail. Such an entail may be barred in the same manner as an ordinary entail. *Cooper v. Macdonald*, 7 Ch. D. 289; Wms. R. P. 165, 381. *See* DISENTAILING DEED.

§ 9. Quasi entail.—A quasi entail at law is where an estate *pur autre vie* is given to a man and the heirs of his body; as if land held during the life of A. is given to B. and the heirs of his body. In such a case, B. may bar the quasi entail by a simple deed of grant; if he dies in the lifetime of A. without having done so, the land descends to the heir of his body as special occupant. (Wms. Seis. 166. *See* OCCUPANT.) A customary quasi estate tail in copyholds is similar. *Id.* 168.

§ 10. In equity.—A quasi estate tail in equity is where land held on lease for lives with a covenant for perpetual renewal is given to a person and the heirs of his body; it may be barred by deed *inter vivos*. (Wms. Seis. 167.) A customary quasi estate tail in equity in copyholds is similar. *Id.* 168.

§ 11. Modern use of entails.—As an estate tail can now be barred or converted into an estate in fee-simple by the owner, subject to certain restrictions, the object with which estates tail were invented, namely, "to preserve the inheritance in the blood of them to whom the gift was made," (Co. Litt. 19 a,) is not completely secured. The principal use of estates tail at the present day is to keep an estate in a family for two generations; thus, on the marriage of the owner of an estate, it is generally settled on him for life, with remainder in tail to the eldest son of the marriage; when a son is born, he is tenant in tail, subject to his father's life estate, and when he attains twenty-one, he is able, with the consent of his father as protector (*q. v.*), to bar the entail; the father usually gives his consent on the terms of the estate being resettled on the son for life, with remainder in tail to his issue, and so on. Wms. R. P. 51. *See* BAR; DESCENT; DISENTAIL; FINE; FORMEDON; FRANKMARRIAGE; RECOVERY; SETTLEMENT; TENANT IN TAIL AFTER POSSIBILITY OF ISSUE EXTINGUISHED; TENANT IN TAIL EX PROVISIONE VIRI.

ESTATE UPON CONDITION.—

See CONDITION; ESTATE, § 8.

ESTATE UPON CONDITION, (defined). 31 Mich. 43.

ESTATE, WORLDLY, (in a will). 11 East 220.

ESTATE TAIL, (when created by implication). 7 Taunt. 209.

ESTATE, TEMPORAL, (in a will). 2 Wm. Bl. 889; 3 Brod. & B. 85.

ESTATE, THEIR, (in a will). 2 Hawks (N. C.) 117.

ESTATES, (in a will). 1 Cox Ch. 362; 7 Jur. 274, 295; 2 Marsh 113; 1 Chit. Gen. Pr. 159.

ESTATES, ALL MY, (in a will). 2 Doug. 759.
ESTATES, ALL MY PERSONAL AND LANDED, (in a will). 5 Beav. 558.

ESTATES, ALL THE SAID, (in a will). 4 Mau. & Sel. 366.

ESTATES, LANDED AND PERSONAL, (in a will). 8 Jur. 563.

ESTATES OF THE REALM.—The three branches of the legislature in England—the Lords Spiritual, the Lords Temporal and the Commons.

ESTATES, PERSONAL, (in a will). 11 East 246.

ESTATES, PERSONAL AND LANDED, (in a will). 7 Jur. 98.

ESTATES, REAL, (in a will). 2 Myl. & K. 759.

ESTATES, WHATSOEVER AND WHERESOEVER, (in a will). 1 Ves. 201, 205.

ESTENDARD, ESTENDART, or STANDARD.—An ensign for horsemen in war.

ESTER IN JUDGMENT.—To appear before a tribunal either as plaintiff or defendant.—*Bourier*.

ESTERLING.—See **STERLING**.

ESTIMATE, (the expense of building a bridge, by an engineer). 2 Car. & P. 378.

ESTIMATED CASH VALUE, (in insurance policy). 66 Pa. St. 22; 5 Am. Rep. 323.

ESTOP.—To stop; to prevent. See **ESTOPPEL**.

ESTOPPEL.—

§ 1. An admission of so conclusive a nature that the party whom it affects is not permitted to aver against it or offer evidence to controvert it. 2 Sm. Lead. Cas. 778, (notes to *Doe v. Oliver*, 5 M. & R. 202, and *The Duchess of Kingston's Case*).

Estoppels are generally divided into three kinds—by matter of record, by deed, and *in pais*. Co. Litt. 352a.

§ 2. **By record.**—Estoppel by matter of record is based on the principle that a record imports such absolute verity that no person against whom it is producible shall be permitted to aver against it. (Co. Litt. 260a; *R. v. Carlile*, 2 Barn. & Ad. 262, cited in 2 Sm. Lead. Cas. 779.) The most important kind of estoppel by record occurs in the case of judgments (*q. v.*): thus, where A. wrongfully entered judgment against B., it was held that so long as the judgment stood B. could not dispute it,

and that his remedy was to apply to the court to set it aside. (*Huffer v. Allen*, L. R. 2 Ex. 15.) Other instances of estoppel by record occur in the case of letters-patent, fines and recoveries, &c. (Co. Litt. 352a.) As to estoppel by decrees of the Court of Chancery, see 2 Sm. Lead. Cas. 801. See **RECORD**.

§ 3. **By deed.**—Estoppel by deed or specialty is based on the rule that no man is allowed to dispute his own solemn deed. (*Goodtitle v. Bailey*, Cowp. 601, cited in 2 Sm. Lead. Cas. 845; *General Finance, &c. Co. v. Liberator, &c. Society*, 10 Ch. D. 15.) Hence, as a general rule, if a person executes a deed containing a recital or statement, he cannot afterwards deny the truth of it, or show it to be incorrect.

§ 4. **Estoppel by matter in pais** occurs in the case of estoppel “by livery, by entry, by acceptance of rent, by partition and by acceptance of an estate.” (Co. Litt. 352a.) The most important of these instances at the present day is the last, which occurs when a person has accepted a lease from one who has no title whatever to grant it; in such a case, neither the tenant nor any one claiming under him can dispute the lessor's title; the tenant is therefore said to have an estate by estoppel, and the lessor a reversion in fee simple by estoppel, and if the lessor subsequently acquires an interest which, if he had had it before, would have enabled him to grant the lease validly, the interest is said to feed the estoppel, so that the lease is as effectual for all purposes as if the lessor had had a sufficient interest when he granted it. (1 Sm. Lead. Cas. 97; 2 *Id.* 852; *Woodf. Land. & T.* 2, 196; *Crealock v. Heath*, L. R. 10 Ch. 22.) A licensee of a patent, &c., is similarly estopped from denying the patentee's right to the patent. *Clark v. Adie*, 2 App. Cas. 435.

§ 5. **Estoppel by misrepresentation and negligence.**—There are also many modern rules which may be referred to the doctrine of estoppel *in pais*; such are those that the acceptor of a bill of exchange is precluded from denying the drawer's handwriting; that a bailee cannot question the title of his bailor, &c. (2 Sm. Lead. Cas. 866), the general rule being that where a man by his words or

conduct wilfully or by negligence causes another to believe in the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from denying the existence of that state of facts. (*Pickard v. Sears*, 6 Ad. & E. 475; 2 Sm. Lead. Cas. 868; *Lind. Part.* 1303; *Carr v. London and North Western R. R. Co.*, L. R. 10 C. P. 307; *Poll. Cont.* 403; *Burkinshaw v. Nicolls*, 3 App. Cas. 1026.) Thus, where a person draws a check in such a manner that the amount may be altered without difficulty, and it is altered by being increased, he cannot sue his banker for paying the increased amount, because he is estopped by his own negligence. *Guardians of Halifax v. Wheelwright*, L. R. 10 Ex. 183; *Arnold v. Cheque Bank*, 1 C. P. D. 578; *Baxendale v. Bennett*, 3 Q. B. D. 525. See *McKenzie v. British Linen Co.*, 6 App. Cas. 82.

§ 6. **Equitable estoppel**, or estoppel by acquiescence, occurs where a person by tacitly representing his own position to be more favorable to another person than it really is, has induced that other to alter his position on the faith of the representation being true. Thus, if a stranger begins to build on land, supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, the court will not afterwards allow the real owner to assert his title to the land. *Ramsden v. Dyson*, L. R. 1 H. L. 129; *Poll. Cont.* 561.

§ 7. A person who has a public or quasi public status (such as the vicar of a parish) cannot waive or divest himself of the rights incident to his office by conduct which, in the case of a private person, would amount to estoppel. *MacAllister v. Bishop of Rochester*, 5 C. P. D. 194.

ESTOPPEL, (defined). 15 Mass. 106, 110; 5 Den. (N. Y.) 154, 157; 3 Hill (N. Y.) 215, 224; 3 Johns. (N. Y.) Cas. 101, 103; 1 N. Y. 242; *Busb. (N. C.)* L. 157, 161; *Co. Litt.* 352a. — (by deed). 7 Conn. 214, 220; 16 Wend. (N. Y.) 460, 473. — (in pais). 26 Cal. 23; 88 Ill. 186. — (general principles relating to). 5 Wheel. Am. C. L. 89 n.

Estoveria sunt ardendi, arandi, construendi et claudendi (13 Co. 68): *Estov-*

ers are of firebote, ploughbote, housebote and hedgebote.

Estoveris habendis.—A writ for a wife judicially separated to recover her alimony or estovers. Obsolete.

ESTOVERS.—From the OLD FRENCH: *estover*, or *estovoir*, that which is necessary. *Loysel, Inst. gl.; Termes de la Ley*.

Every tenant for life or years of freehold land, unless restrained by agreement, may of common right take upon the land a reasonable quantity of wood for fuel, repairs, &c. This is called "estovers," or "botes," which are sometimes divided into house-bote, for fuel and repairs of the house, plough-bote, for making and repairing instruments of husbandry, and hay-bote, for repairing fences. (*Co. Litt.* 41 b; *Britt.* 153.) Copyholders' rights of estovers are sometimes subject to customary restrictions. (*Elt. Copyh.* 209.) As to common of estovers, see **COMMON**, § 11.

ESTOVERS, (grant of). *Shep. Touch.* 96.

— (a prescription to have). *Cro. Jac.* 25.

— (reasonable, what are). 4 Paige (N. Y.) 174, 177.

— (tenant for life may take reasonable). 2 Hill (N. Y.) 157; 1 Paige (N. Y.) 573.

ESTRAYS.—Such valuable animals as are found wandering at large, the owner being unknown. In England, after they have been proclaimed and kept for a year and a day without the owner appearing, the law gives them to the crown; in most cases, however, they belong to the lord of the manor by special grant from the crown. (1 Bl. Com. 297; 2 Steph. Com. 548. See **PREROGATIVE**.) In the United States the statutes on this subject generally provide for impounding the estrays and returning them to the owner after payment of expenses.

ESTRAYS, (defined). 29 Iowa 437; 4 Oreg. 206, 208; 27 Wis. 422; 1 Bl. Com. 297.

— (what are not). 18 Pick. (Mass.) 422, 426.

ESTREAT.—An extract or copy of an original record or writing; particularly applied to extracts from the records of fines and amercements imposed by a court. If the condition of a recognizance is broken, the recognizance is forfeited, and, on its being estreated, the cognizors become indebted for the sums in which they are bound. A recognizance is estreated (*i. e.* extracted) by a copy being made from the original and sent to the proper authority to be enforced; thus, estreated recognizances in the English supe-

rior courts and courts of assize are sent into the Exchequer, while those before justices of the peace are sent to the sheriff, with writs of execution to enable him to levy the amounts. Stats. 3 and 4 Will. IV. § 99; 3 Geo. IV. c. 46; 7 Geo. IV. c. 64; 16 and 17 Vict. c. 32; Arch. Cr. Pl. 92; Pritch. Quar. Sess. 1108.

ESTRECIATUS.—Straightened; as applied to roads.—*Cowell*.

ESTREPE.—To make spoils in lands to the damage of another, as of a reversioner, &c.

ESTREPEMENT.—FRENCH: *estropier*, to lame; LATIN: *extirpare*.

Any spoil or waste made by tenant for life, upon any lands or woods to the prejudice of him in reversion; also making land barren by continual ploughing. The writ of *estrepement* was abolished by 3 and 4 Will. IV. c. 27.

ET.—And. The introductory word of several Latin phrases formerly in common use, such as—

ET ALIUS; ET ALII.—And another; and others. Commonly abbreviated *et al.* or *et als.*, in the titles of causes, where there are two or more plaintiffs or defendants.

ET AL., (in appeal bond). 4 La. Ann. 313; 12 *Id.* 282.

ET CÆTERA.—And others; and other things. Commonly abbreviated *etc.*

ET CÆTERA, (defined). 4 Metc. (Ky.) 211.

—— (in a bond). 3 Mon. (Ky.) 196.

—— (in a recognizance). 6 Serg. & R. (Pa.) 427.

—— (in a statute). 27 Ark. 564, 568.

—— (in a will). L. R. 11 Eq. 363.

ET DE HOC PONIT SE SUPER PATRIAM.—And of this he puts himself upon the country. The formal conclusion of a common law plea in bar by way of traverse. The literal translation is retained in the modern form.

ET HABEAS IBI TUNC HOC BREVE.—And have you then there this writ. The formal words directing the return of a writ. The literal translation is retained in the modern form of a considerable number of writs.

ET HOC PARATUS EST VERIFICARE.—And this he is prepared to verify. The formal conclusion of an ancient plea in bar in confession and avoidance. The literal translation is still retained in the modern form of such pleas.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM.—And this he prays may be inquired of by the country. The conclusion of a pleading on the part of the plaintiff which tenders an issue of fact. The literal translation is still used in the modern forms.

ET INDE PETIT JUDICIUM.—And thereupon he prays judgment. A formal clause at the end of pleadings, praying judgment in favor of the party pleading. It is literally translated in the modern forms.

ET INDE PRODUCIT SECTAM.—And thereupon he brings suit. The formal conclusion of a declaration.

ET MODO AD HUNC DIEM.—And now at this day. Words formerly used in entering continuances on record, expressive of the day of appearance of the notices. The translation is still used.

ET NON.—And not. Words used in pleading a denial, instead of *absque hoc*.

ET NON, (in pleading). 3 Bouv. Inst. 295 *n*.

ET SIC.—And so. The former introductory words of a special conclusion to a plea in bar, to render it positive, and free from the fault of argumentativeness. These words were followed by *nil debet* or *non est factum*, where the action was debt on a contract or sealed instrument, respectively.

EUNDO, MORANDO, ET REDEUNDO.—In going, remaining, and returning. This phrase expresses the privilege from arrest of a witness or party to a suit in going to and returning from court and while remaining there.

EUNOMY.—A constitution of good laws.

EVASION.—A subtle endeavoring to set aside truth or to escape the punishment of the law. This will not be allowed. If one person says to another that he will not strike him, but will give him a pot of ale to strike first, and, accordingly, the latter strikes, the returning the blow is punishable; and if the person first striking is killed, it is murder; for no man shall evade the justice of the law by such a pretence. (1 Hawk. P. C. 81.) So no one may plead ignorance of the law to evade it.—*Jacob*.

EVENINGS.—The delivery at even or night of a certain portion of grass, or corn, &c., to a customary tenant, who performs the service of cutting, mowing or reaping for his lord, given him as a gratuity or encouragement.—*Kenn. Gloss.*

EVENT, (defined). 11 Barb. (N. Y.) 471, 473.

—— (costs to abide). 2 Chit. Gen. Pr. 86; 5 East 489; L. R. 8 Q. B. 280; 3 T. R. 138.

—— (in rule of court). L. R. 5 Ex. D. 15, 180.

EVENTUALLY, (in rule of court). 1 Barb. (N. Y.) 447, 448.

Eventus est qui ex causa sequitur; et dicitur eventus quia ex causa evenit (9 Co. 81): An event is that which follows from the cause, and is called an event because it eventuates from causes.

Eventus varios res nova semper habet (Co. Litt. 379): A new matter always produces various events.

EVERY OF THEM, (in a bond). 2 Browne (Pa.) 31; 1 Rawle (Pa.) 255; 4 Watts (Pa.) 50; 2 Wheel. Am. C. L. 379.

— (in a covenant). 3 Taunt. 87.

— (in a will). 12 Serg. & R. (Pa.) 154.

Every one must be taken to intend that which is the natural consequence of his actions.—A leading maxim of the law of evidence, especially applicable in criminal cases.

EVERY THING ELSE, (in a will). 7 Bing. 664, 672.

EVES-DROPPERS.—See **EAVES-DROPPERS**.

EVICT.—This word is used in the books where a person in possession of land under a title derived from A. is turned out of possession by B., who has a title paramount. Co. Litt. 173b. See **EXCHANGE**, § 2; **WARRANTY**.

EVICTION.—A popular term for turning a tenant of land out of possession, either by re-entry or by legal proceedings, such as an action of ejectment. It is usually applied to ouster from real property only, but it is not inapplicable to the dispossession from personal property also. The covenants for seisin in fee-simple and for good right to convey usually inserted in deeds are, in substance, covenants against eviction, in this respect differing from the covenant for quiet enjoyment. (*Child v. Stenning*, 11 Ch. D. 82). It is competent for a landlord to evict his tenant for proper cause; but a landlord may also be guilty of a wrongful eviction of his tenant, as where without proper cause he either actually, *i. e.* physically, evicts him, or does any act of a permanent character with the intention of evicting the tenant, and which is inconsistent with the latter's returning into or continuing in possession.

EVICTION, (defined). 5 Ind. 393; 15 La. Ann. 514, 515; 106 Mass. 201, 203.

— (what is an). 25 Minn. 525, 527; 4 Wend. (N. Y.) 423.

EVICTION, (what is not). 5 Conn. 497; 4 Cow. (N. Y.) 581, 585; 12 Wend. (N. Y.) 529. — (cannot be more than "ouster"). 8 Cow. (N. Y.) 727, 731.

— (of tenant by landlord) 6 Wheel. Am. C. L. 375.

— (synonymous with "ouster"). 4 Mass. 349, 352.

EVIDENCE.—

§ 1. **Judicial**, and **extra-judicial**.—Evidence is means employed for the purpose of proving an unknown or disputed fact, and is either judicial or extra-judicial. Judicial evidence is that which is used on trials or inquiries before courts, judges, commissioners, referees, &c., while extra-judicial evidence is that which is used to satisfy private persons as to facts requiring proof.

§ 2. An important kind of extra-judicial evidence is that known as conveyancers' evidence, namely, that evidence which by the practice of conveyancers is required in the investigation of the title to property, in proof of facts on which the goodness of the vendor's title depends; such are original title deeds, probates of wills, certificates of births, deaths and marriages, statutory declarations, &c. (*See Cov. Conv. Ev., passim*). The old writers frequently describe title-deeds as "evidences;" "the evidences are, as it were, the sinews of the land;" Co. Litt. 6a, 213a; Ducange, *s. v. Evidentiæ*.) Evidence by statutory declaration is sometimes called "declaratory evidence."

Judicial evidence is of the following kinds—

§ 3. **Direct**.—Evidence is direct where the fact proved by it (the evidentiary fact) is the fact in issue, or the fact required to be proved (*see Best Ev.* 25); as where on a trial for murder a witness deposes that he saw the prisoner kill the deceased.

§ 4. **Indirect** evidence is where the existence of the fact in issue is inferred from the evidentiary fact. Such evidence is (1) *conclusive*, when the existence of the fact in issue follows either by a necessary consequence of the laws of nature or from a rule of law (as where an *alibi* is proved, or the certificate of incorporation of a company is produced); or (2) *circumstantial* or *presumptive*, where it only rests on a greater or less degree of probability, as where a person accused of

a murder is proved to have in his possession the instrument by which the deceased was killed. (Best Ev. 25.) Evidence which shifts the burden of proof is called "*primâ facie* evidence." *Id.* 434. See PRESUMPTION; PROOF.

§ 5. **Real** evidence is that which is derived from any object belonging to the class of things: thus, footsteps in a field are real evidence that some one has been there; and the production of a mutilated document is real evidence of the mutilation.*

§ 6. **Documentary** evidence is that derived from conventional symbols (such as letters), by which ideas are represented on material substances. A written contract is documentary evidence. Documents are divided into those which prove themselves, such as the probate of wills, certificates by registrars and other officials, &c., (Pow. Ev. 360), and those which require personal evidence to prove them, such as agreements, deeds and other private documents. See ANCIENT DOCUMENTS.

§ 7. **Personal** evidence is that which is afforded by human beings, either by words or by signs intended to convey ideas. It may be personal either as to its source, as where a person deposes to a fact which he has seen (*e. g.* an assault); or as to its instrument, *i. e.* the means by which it is brought before the tribunal. The former class has some kinds with special names, of which "opinion" evidence, and its principal variety, "expert" or "scientific" evidence, are the most important. Best Ev. 648.

§ 8. **Oral, and written.**—The latter class (evidence personal by reason of its instrument), also called "testimony," is either oral or written. *Oral* evidence is that given by a witness *vivâ voce* before the tribunal. *Written* evidence is given either by affidavit or deposition (*q. v.*) In general, the evidence on the trial of an action is given orally in court, unless the parties agree to have it taken by deposition, and subject to the rule that the court may order certain witnesses to be examined before an examiner or on a commis-

sion, or order a particular fact or facts to be proved by deposition.

§ 9. **Original** evidence is that which comes from its source without passing through any intermediate channel; as where a witness deposes to a fact within his own knowledge, or where a thing or an original document is produced to the tribunal. Original documentary evidence is called "primary" evidence; original real evidence is sometimes called "immediate real" evidence.

§ 10. **Derivative, unoriginal, transmitted, second-hand, or reported** evidence, is that which is brought from its source through an intermediate channel, as where a witness offers to prove a fact of the existence of which he has been informed by another person, or describes the condition of a thing or the contents of a document not produced; so, a copy of a document is derivative evidence of the contents of the original. (Best Ev. 26.) Derivative evidence is called—(1) *hearsay* or *second-hand* (Rose. Cr. Ev. 25), when a witness makes a statement on the authority of another person (see DECLARATION, § 5); (2) *secondary* or *parol*, when the contents of a document are brought before the court either orally or by means of a copy; and (3) *reported*, when the original source is real, as where the appearance of a thing is described by a witness.

§ 11. **Best, and secondary.**—The distinction between original and derivative evidence is important with reference to the rule that where two kinds of evidence are accessible, the best evidence must be given (Best Ev. 115; see, however, as to evidence of the condition of a chattel, &c., *R. v. Francis*, L. R. 2 C. C. R. 128); hence, secondary evidence of the contents of a document is not admissible if the original can be produced. Where, however, a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, a copy of or extract from it is admissible in evidence if it is either proved to have been examined with the original, or purport to be certi-

* The classification of real, personal and documentary evidence here given is not that given in the text-books, where there seems to be some

confusion between sources and instruments of evidence.

fied as a true copy or extract by the officer having the custody of the original. *See* CERTIFIED COPY; COPY; EXTRACT; NOTICE TO PRODUCE.

§ 12. **Substantive** evidence is that adduced for the purpose of proving a fact in issue, as opposed to evidence given for the purpose of discrediting a witness (*i. e.* showing that he is unworthy of belief) or of corroborating his testimony. *Best Ev.* 246, 773, 803; *Rosc.* 65, where "evidence in chief" is also used as equivalent to "substantive evidence;" "evidence in chief" is more commonly used in speaking of affidavit evidence, or of evidence given on an examination in chief. *See* AFFIDAVIT; EXAMINATION; *also*, DISCREDIT.

§ 13. **Intrinsic**.—Evidence may be either intrinsic [internal] or extrinsic. Intrinsic evidence is that which is derived from a document without anything to explain it, or, as it is said, "without going beyond the four corners of the document." The terms "intrinsic" and "internal" are not common in practice.

§ 14. **Extrinsic**, or **parol** evidence is evidence given to explain, vary or contradict a document, being derived from some other source than the document itself. (*Wigr. Extrin. Ev. passim*; *Wats. Comp. Eq.* 1208.) It is called (1) *explanatory* evidence, where it is used for the purpose of ascertaining the meaning of the words actually used in the document, and (2) evidence to prove *intention*, where the object is to show what was intended to have been, but has not been, written. The principal varieties of explanatory evidence are (a) evidence of usage to show that certain words in the document were employed in a technical sense understood by the parties (*Best Ev.* 319); and (b) evidence of circumstances (tautologically, "surrounding" or "collateral" circumstances), as where evidence is given of the state of a testator's family, in order to explain the provisions of his will. (*Charter v. Charter*, *L. R.* 7 H. L. 364.) Evidence of intention is as a rule only admissible to explain latent ambiguities; thus, where a testator gives a legacy to William Smith, evidence is admissible to prove which William Smith he intended. (*Best Ev.* 314.) Numerous other classifications of evidence

will be found in *Best* and in *Bentham's* works on evidence; but they have not been adopted in practice. *See* ADMISSION; CONFESSION; DECLARATION; ESTOPPEL; EXAMINATION; FACT; NOTICE; PRESUMPTION; PROOF; RES GESTÆ; VOIR DIRE.

EVIDENCE, (defined). 56 *Ala.* 87; 31 *Cal.* 201, 203; 3 *Bl. Com.* 367; *Co. Litt.* 283a; 1 *Stark. Ev.* 8.

— (distinguished from "proof"). 6 *How.* (N. Y.) *Pr.* 96, 98; 1 *Greenl. Ev.* § 1.

— (distinguished from "testimony"). 17 *Ind.* 272, 280.

EVIDENCE AGAINST HIMSELF, (in State constitution). 52 *N. H.* 459; 13 *Am. Rep.* 88.

EVIDENCE OF DEBT.—A written instrument or security for the payment of money, importing on its face the existence of a debt.

EVIDENCE OF INDEBTEDNESS, (what is). 12 *So. Car.* 202.

EVIDENCE OF THE FREEDOM OF A NEGRO, (what is sufficient). 1 *Coxe* (N. J.) 332.

EVIDENCE OF TITLE.—A deed or other document establishing the title to property, especially real estate. *See* EVIDENCE, § 2.

EVIDENCE, **PRIMA FACIE**, (defined). 97 *Mass.* 230, 243.

EVIDENTIARY.—Having the quality of evidence; constituting evidence; evidencing. A term introduced by Mr. Bentham, and, from its convenience, adopted by other writers.—*Burrill*.

EVINCING THE LUNACY OF THE PARTY, (in the affidavits to a petition of lunacy). 1 *Sax.* (N. J.) 19, 24.

EVOCATION.—In the French law, withdrawing a case from the cognizance of an inferior court.

EWAGE.—Toll paid for water-passage.—*Jacob*. *See* AQUAGIUM.

EWBRICE.—Adultery.—*Jacob*.

EWRY.—An office in the royal household where the table linen, &c., is taken care of.—*Wharton*.

EX.—From; by; on; out of; on account of; with; according to. The introductory word of many Latin maxims and phrases, of which the following are the principal ones—

EX ABUNDANTI CAUTELA.—From abundant caution.

EX ÆQUITATE.—According to equity.

EX ÆQUO ET BONO.—In equity and good conscience.

EX ALTERA PARTE.—Of the other part.

Ex antecedentibus et consequentibus fit optima interpretatio (2 Inst. 317): From what goes before and what follows, the best interpretation is arrived at. The context must be most thoroughly looked into before a correct interpretation can be obtained. This maxim is one of the most important rules for the construction of contracts, which in all cases are to be construed according to their object, and the whole of their terms.

EX ARBITRIO JUDICIS.—By or in the discretion of the judge.

EX ASSENSU CURLÆ.—By or with the consent of the court.

EX ASSENSU PATRIS.—By or with the consent of the father. A species of dower *ad ostium ecclesiæ*, during the life of the father of the husband; the son, by the father's consent expressly given, endowing his wife with parcel of his father's lands. Abolished by 3 and 4 Will. IV. c. 105, § 13.

EX CATHEDRA.—With the weight of one in authority. Originally applied to the decisions of the popes from their *cathedra*, or chair.

EX CERTA SCIENTIA.—Of certain knowledge. A phrase found in old English letters-patent, implying that the crown had full knowledge of the matter.

EX COMITATE.—Out of comity, or courtesy.

EX COMPARATIONE SCRIPTORUM.—By comparison of writings, *i. e.* handwritings.

EX CONCESSIS.—According to what has been already allowed.

EX CONSULTO.—With deliberation.

EX CONTRACTU.—From a contract. One of the greatest classes of obligation from which a right of action accrues. The actions are (1) account; (2) *assumpsit*, or promise; (3) covenant; (4) debt; (5) *detinue*; (6) *scire facias*, or *revivor*.

EX CONTRACTU, (actions of). 19 Johns. (N. Y.) 427, 435.

EX DEBITO JUSTITIÆ.—From a debt of justice; in accordance with the demands of justice. This expression is the opposite of *ex gratia* (*q. v.*)

EX DEFECTU SANGUINIS.—From failure of issue.

EX DELICTO.—From a tort or offence. The actions which arise from torts are: (1) case; (2) trespass; (3) trover; (4) *replevin*.

EX DELICTO, (actions). 19 Johns. (N. Y.) 427, 435.

Ex delicto non ex supplico emergit infamia: Infamy arises from the crime, not from the punishment.

EX DEMISSIONE (commonly abbreviated *ex dem.*)—Upon the demise. A phrase forming part of the title of the old action of ejectment.

Ex diuturnitate temporis omnia præsumuntur esse solemniter acta (Jenk. Cent. 185): From lapse of time, all things are presumed to have been done properly.

EX DOLO MALO.—Out of fraud or deceit.

Ex dolo malo non oritur actio (Cowp. 343): From a fraud an action does not arise.

Ex donationibus autem feoda militaria vel magnum serjeantium non continentibus oritur nobis quoddam nomen generale, quod est socagium (Co. Litt. 86): From grants not containing military fees or grand serjeanty, a kind of general name is used by us, which is socage.

Ex facto jus oritur (2 Inst. 49): The law arises from the fact.

EX FICTIONE JURIS.—By a fiction of law.

Ex frequenti delicto augetur pœna (2 Inst. 479): Punishment increases with increasing crime.

EX GRATIA.—Of, or out of, grace or favor. A phrase inserted in crown grants to indicate that they were not obtained upon any claim of legal right (*ex debito justitiæ*).

EX GRAVI QUERELA.—On the grievous complaint. A writ that lay for him to whom any lands or tenements in fee were devised (within any city, town or borough wherein lands were devisable by custom), against the heir of the devisor when he entered and detained them from him.—*Reg. Orig.* 224. Abolished by 3 and 4 Will. IV. c. 27, § 36.

EX INDUSTRIA.—From a fixed purpose; intentionally.

EX LICENTIA REGIS.—By license of the king.

EX MALEFICIO.—On account of misconduct, or a tort.

Ex maleficio non oritur contractus: From a tort a contract does not arise.

Ex malis moribus bonæ leges natæ sunt (2 Inst. 161): Good laws arise from evil manners.

EX MERO MOTU.—Of his own accord. Said of orders and rules made by a judge, of his own motion, without application of any person.

EX MORA.—From or by reason of delay. Interest on money, after the time of payment of the principal has expired, is said to be *ex mora*.

EX MORE.—According to custom.

Ex multitudine signorum colligitur identitas vera (Bac. Max.): True identity is collected from a number of signs.

EX NECESSITATE.—From necessity. Thus, *ex necessitate legis*, from the necessity of the law; *ex necessitate rei*, from the necessity of the thing.

Ex nudo pacto non oritur actio (Noy. Max. 24): An action does not arise from a nude contract. Every simple contract must be supported by a good and valuable consideration, as money, marriage, or the like. A good consideration (*i. e.* relationship, or natural love and affection) will not support an assumpsit. Chitty lays down the rule "that a sufficient consideration or recompense for making, or motive or inducement to make, the promise upon which a party is charged, is of the very essence of a contract not under seal, both at law and in equity; and that such consideration must exist, or the promise will be void and no action be maintainable thereon." Such consideration may be either executed, executory, concurrent or continuing.

EX OFFICIO.—Officially; by virtue of office. An authority properly exercised by an officer as appertaining to the office, though not expressly delegated to him, is said to be exercised *ex officio*.

Ex OFFICIO, (defined). 1 Wyom. T. 318; Love. Wills 12 *n.*

EX OFFICIO INFORMATIONIS.—Proceedings filed in the English Queen's Bench Division by the attorney-general, at the direct and proper instance of the crown, in cases of such enormous misdemeanors as peculiarly tend to disturb or endanger the government, or to molest or affront the sovereign in discharging the royal functions. The information is tried by a jury of the county where the offence arose, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *nisi prius* into that county, and tried

either by a common or special jury, like a civil action. (4 Steph. Com. (7 edit.) 374.)—*Wharton*.

EX OFFICIO OATH.—An oath taken by offending priests; abolished by 13 Car. II. st. 1, c. 12.

Ex pacto illicito non oritur actio: No action arises out of an illicit bargain.

EX PARTE.—

§ 1. In its primary sense, *ex parte*, as applied to an application in a judicial proceeding, means that it is made by a person who is not a party to the proceeding, but who has an interest in the matter which entitles him to make the application. Thus, in a bankruptcy proceeding or an administration action, an application by A. B., a creditor, or the like, would be described as made "*ex parte* A. B.," *i. e.* on the part of A. B.

§ 2. In its more usual sense, *ex parte* means that an application is made by one party to a proceeding in the absence of the other. Thus, an *ex parte* injunction is one granted without the opposite party having had notice of the application. It would not be called *ex parte* if he had proper notice of it, and chose not to appear to oppose it.

EX PARTE, (examination of witness). 2 Scam. (Ill.) 61.

EX PARTE MATERNA.—On the maternal side, or line.

EX PARTE MATERNA, (defined). 4 Zab. (N. J.) 431, 433.

EX PARTE PATERNA.—On the paternal side, or line.

EX PARTE PATERNA, (defined). 4 Zab. (N. J.) 431, 433.

EX PARTE TALIS.—A writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison.—*F. N. B.* 129.

Ex paucis dictis intendere plurima possis (Litt. § 384): You can imply many things from few expressions.

Ex paucis plurima concipit ingenium (Litt. § 550): From a few words or hints the understanding conceives many things.

EX POST FACTO, or **POST-FACTO** literally means "from that which

happened subsequently."* Thus, a transaction which was originally binding and effective may become void *ex post facto*, *i. e.* by matter subsequent. (See FRAUD; VOID.) The term is also applied in a general sense to denote anything which has a retrospective operation; thus, a statute applying to acts and events which took place before it was enacted, is sometimes called *ex post facto* legislation.

EX POST FACTO, (defined). 16 B. Mon. (Ky.) 37.

—— (when a deed becomes void by matter). Shep. Touch. 70.

EX POST FACTO LAW.—A law which makes an act done before its passage, and which was innocent when done, criminal. (3 Dall. (U. S.) 186.) A law which renders an act punishable in a manner in which it was not punishable when committed. 3 Cranch (U. S.) 87.

EX POST FACTO LAW, (defined). 1 Baldw. (U. S.) 60, 75; 3 Dall. (U. S.) 386, 391; 4 Wall. (U. S.) 172, 277; 2 Wash. (U. S.) 366. 16 Ga. 102; Breese (Ill.) 154; 3 N. H. 473, 475; 13 Vr. (N. J.) 228; 14 Id. 203, 214, 230; 24 How. (N. Y.) Pr. 388; 7 Johns. (N. Y.) 477, 483; 22 N. Y. 95, 104; 3 Desaus. (S. C.) 466, 477; 2 Crim. L. Mag. 385; 1 Kent Com. 408; 1 Bl. Com. 46.

—— (what is an). 25 N. Y. 406; 1 Bay (S. C.) 178, 184; 3 Gratt. (Va.) 632.

—— (what is not). 6 Cranch (U. S.) 87; 2 Gall. (U. S.) 105, 138; 17 How. (U. S.) 456; 2 Paine (U. S.) 74; 9 Wall. (U. S.) 35; 40 Ala. 21; 31 Conn. 63; 47 Id. 518, 532; 2 Root (Conn.) 350; 10 La. Ann. 745; 18 Me. 109, 111; 42 Me. 429; 2 Mass. 223, 226; 8 Id. 424, 430; 2 Pick. (Mass.) 165; 11 Id. 28; 13 Minn. 370; 2 Vr. (N. J.) 133; 36 Barb. (N. Y.) 447, 449; 9 Wend. (N. Y.) 494, 496; 4 Serg. & R. (Pa.) 356, 364; 3 Whart. (Pa.) 481, 484; 9 Gratt. (Va.) 738; Fess. Pat. 54.

—— (in constitution of United States). 9 Cranch (U. S.) 374, 377; 7 Pet. (U. S.) 243, 249; 7 Wheat. (U. S.) 164, 183; 12 Id. 213, 266; 4 Mass. 282, 296; Coxe (N. J.) 272, 276.

—— (distinguished from "retrospective" law). T. U. P. Charlt. (Ga.) 94, 100.

Ex præcedentibus et consequentibus optima fit interpretatio (1 Roll. 374): The best interpretation is made from the context.

EX PROPRIO MOTU.—Of his own accord.

EX PROPRIO VIGORE.—By its [or their] own force. 2 Kent Com. 457.

EX PROVISIONE MARITA.—From the provision of the husband.

EX RELATIONE.—From a narrative or information; on the relation. A case decided in a court of justice is said to be reported *ex relatione* (or *ex rel. amici*) when the reporter derives his knowledge of it not from having been present in court, but from notes or information communicated to him by some one who heard the case argued and decided. See an instance mentioned in Shattock v. Shattock, L. R. 2 Eq. 191. The phrase is also a part of the title of a cause prosecuted by the State through its prosecuting officer "on the relation" of the party aggrieved.

EX TEMPORE.—From the time; by lapse of time.

EX TESTAMENTO.—From, by or under a will. The opposite of *ab intestato* (*q. v.*)

Ex tota materia emergat resolutio (Wing. Max. 238): Let the decision arise from the whole case.

Ex turpi causa (or contractu) non oritur actio.—No action arises from an immoral cause (or base consideration). Contracts founded on a consideration which is *contra bonos mores* are void. See Merryweather v. Nixon, 2 Sm. Lead. Cas. 546, where it was decided that there is no right to contribution between joint tort-feasors.

EX UNA PARTE.—On the one part or side.

EX VI TERMINI.—From the force or meaning of the expression.

EX VISCERIBUS.—From the bowels, from the very essence of the thing. Thus, *ex visceribus causæ*, from the bowels or heart of the cause; *ex visceribus testamenti*, from the particular will in question itself, without reference to the language or construction of any other will.

EX VISITATIONE DEI.—By the visitation of God, or, by a natural cause. A term used in the verdict of a coroner's jury indicating that the death inquired of was a natural one.

EXACTION.—A wrong done by an officer or one in pretended authority, by taking a reward or fee for that which the law allows not, whereas, "extortion" is where an officer takes more than is due, when something is due to him. Co. Litt. 368.

* "*Nunquam crescit ex postfacto preteriti delicti æstimatio.*" (Dig. L. xvii. fr. 138, § 1.) The ordinary way of spelling the phrase in three

words—*ex post facto*—is, of course, incorrect. But constant usage inclines us to adhere to the modern spelling.

EXACTIONS AND DEMANDS, (in a lease). 1 Cro. 161.

EXACTOR REGIS.—The king's collector of taxes; also, a sheriff.

EXALTARE.—In old English law, to raise; to elevate. Frequently spoken of water, i. e. to raise the surface of pond or pool.

EXAMINATION is the interrogation of a person on oath, and is either by written interrogatories (*q. v.*) or *vivâ voce*.

§ 2. **Of witness generally.**—The commonest instance of *vivâ voce* examination occurs in obtaining evidence from witnesses, who are examined in court, or before an officer of the court or an examiner (*q. v.*)

§ 3. **Examination-in-chief, cross, and re-examination.**—When the evidence of the witness is obtained by oral examination, this is called the examination-in-chief; when a witness has been so examined, or has made an affidavit on behalf of the party calling him, and is then examined on behalf of the opposite party in order to diminish the effect of his evidence, this is called cross-examination, and when he is again examined by the party calling him in order to give him an opportunity of explaining or contradicting any false impression produced by the cross-examination, this is called re-examination; it is necessarily confined to matters arising out of the cross-examination. Best Ev. 786; Rosc. Cr. Ev. 140. See DEPOSITION; INTERROGATORY; TESTIMONY; VOIR DIRE.

§ 4. **As to debts.**—Sometimes an examination is in the nature of a cross-examination, as in the case of a judgment debtor being examined as to what debts are owing to him, with a view to their being attached. Republic of Costa Rica v. Strousberg, 16 Ch. D. 8. See ATTACHMENT, § 5; GARNISHEE.

§ 5. **In bankruptcy,** every bankrupt must attend the first meeting of creditors to be examined with reference to his affairs. He must also pass a public examination in court within an appointed time after the first meeting, and may at any time be summoned by the court to be examined. The examination is limited to inquiries as to his property and trade dealings, if any. Robs. Bankr. 539

§ 6. **For admission to the bar.**—Persons desirous of being admitted to practice as attorneys or solicitors are, as a rule, required to pass an examination; in England three, namely, a preliminary examination in general knowledge (English, Latin, arithmetic, &c.) before being articulated; an intermediate examination in elementary law after half the time under articles has been served, in order to ascertain the progress made by the articulated clerk in acquiring the knowledge necessary for a solicitor, and a final examination to test the fitness of the candidate to transact the business of a solicitor. The examinations are conducted by the Incorporated Law Society. (See the Solicitors Act, 1877, and the acts recited in the preamble.) In the United States this subject is regulated by statute in each State, the requirements differing somewhat. See ARTICLED CLERK; ATTORNEY; BARRISTER; INNS OF COURT.

§ 7. **In criminal law.**—The preliminary hearing before a magistrate (or, in the federal courts, before a Circuit Court commissioner,) of the evidence against one accused of crime, with a view to his commitment (or enlargement on bail), if a *prima facie* case is made out against him, or his discharge if not.

§ 8. **Of invention.**—An inquiry made at the patent office in order to ascertain whether an alleged invention is patentable. U. S. Rev. Stat. § 4893.

§ 9. **Of title.**—An examination of the public records by an intending purchaser, or lender of money on real estate security, to ascertain whether the vendor or borrower has a good and valid title to the land about to be conveyed or mortgaged; what incumbrances there are upon it, &c.

EXAMINATION, (in a statute). 8 Nev. 153; 5 N. Y. 562; 15 East 117, 141.

EXAMINATION DE BENE ESSE.—See DE BENE ESSE.

EXAMINATION, DUE, (in a statute). 11 Mass. 379, 383.

— (in an order of a justice). 2 Sess. Cas. 40.

EXAMINATION OF A LONG ACCOUNT, (in the code). 5 Daly (N. Y.) 63.

EXAMINE, (in a statute). 10 Barb. (N. Y.) 216, 218.

EXAMINE, HEAR AND PUNISH, (power to). 1 Salk. 200.

EXAMINE, SETTLE AND ALLOW, (involves the right to reject). 9 Wend. (N. Y.) 508.

EXAMINED COPY.—A copy of a public record, or paper on file in a public office or registry, which has been compared with the original, of which it is a copy, by the officer having custody of the record.

EXAMINER.—

§ 1. **In English law**.—A person appointed by a court to take the examination of witnesses in an action, *i. e.* to take down the result of their interrogation by the parties or their counsel either by written interrogatories or *vivâ voce*. An examiner is generally appointed where a witness is in a foreign country, or is too ill or infirm to attend before the court, and is either an officer of the court, or a person specially appointed for the purpose. See COMMISSION, § 7; DEPOSITION; MASTER.

§ 2. There is an examiner attached to the Chancery Division of the High Court to take the examination of deponents or witnesses. In cases requiring expedition a special examiner is frequently appointed. Under the practice of the Court of Chancery before the Judicature Acts, the evidence to be used on the hearing of a cause was taken either by affidavit or deposition before the examiner; persons so giving evidence were subject to cross-examination and re-examination. (Hunt. Eq. 72.) This practice has been abolished. See EVIDENCE, § 7.

§ 3. In New Jersey, an examiner is an officer appointed by the Court of Chancery to take testimony in causes depending in that court. His powers are similar to those of the English examiner in chancery. *Supra*, § 2.

§ 4. **In the patent office**.—An officer in the patent office charged with the duty of examining the patentability of inventions for which patents are asked.

EXAMINER IN CHANCERY.—

See EXAMINER, § 2, 3.

EXAMINERS.—Persons appointed to examine applicants for admission to practice law.

EXANNUAL ROLL.—The old way of exhibiting sheriffs' accounts. Illeivable and desperate debts were transcribed into this roll, which was yearly read, to see what might be recovered.—*Cowell*.

EXCAMB.—In the Scotch law, to exchange.

EXCAMBIATOR.—A broker; one employed to exchange lands.—*Cowell*.

EXCAMBION.—In the Scotch law, a contract whereby one piece of land is exchanged for another.

EXCAMBIUM.—An exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesie*. See ESCAMBIUM.

EXCELLENCY.—The title of a viceroy, governor, ambassador or commander-in-chief.

EXCEPT, (in a covenant). 16 East 352.

—— (in a deed). 4 Doug. 306.

—— (in a lease). Hob. 273, 276; 1 Salk. 196.

—— (in an award). Cro. Jac. 277, 278.

—— (synonymous with "until"). 10 Mass. 379, 383.

EXCEPT AS HEREINAFTER MENTIONED, (in a lease). 6 Barn. & C. 430, 432.

EXCEPTING AND RESERVING, (in a deed). 129 Mass. 231, 233; 11 Wend. (N. Y.) 36.

EXCEPTIO.—In the Roman and civil law, an exception; the designation for the defendant's plea. In the old books the word heads many phrases being the names of different exceptions and defences—thus, *exceptio ad breve prosternendum*, a plea in abatement; *exceptio dilatoria*, a dilatory exception, or plea; *exceptio doli mali*, a plea of fraud; *exceptio in factum*, a plea founded upon the particular facts of the case; *exceptio metus*, a plea of duress; *exceptio pacti conventi*, a plea that plaintiff had stipulated not to sue; *exceptio pecunie non numerate*, a denial that the money sued for was ever received by defendant; *exceptio peremptoria*, a peremptory exception, or plea in bar; *exceptio rei judicata*, a defence that the matter has been already adjudged in another court between the parties; *exceptio temporis*, a plea similar to the modern one of the statute of limitations.

Exceptio ejus rei cujus petitur dissolutio nulla est (Jenk. Cent. 37): There is no exception of that thing of which the dissolution is sought.

Exceptio falsi omnium ultima: A plea denying a fact is the last of all.

Exceptio nulla est versus actionem quæ exceptionem perimit (Jenk. Cent. 106): There is no exception against an action which entirely destroys an exception.

Exceptio probat regulam de rebus non exceptis (11 Co. 41): An exception proves the rule concerning things not excepted.

Exceptio quæ firmat legem, exponit legem (2 Buls. 189): An exception which confirms the law, expounds the law.

Exceptio semper ultima ponenda est (9 Co. 53): An exception is always to be put last.

EXCEPTION.—

§ 1. **Conveyancing.**—In conveyancing, an exception is a clause in a deed whereby the feoffor, donor, grantor, lessor, &c., excepts something out of that which he had granted before by the deed, so that the thing excepted does not pass by the grant. An exception must be part of the thing granted, and must be in *esse* at the time of the grant, while a reservation (*q. v.*) must be of some new thing issuing out of the thing granted. Shep. Touch. 78; 1 Dav. Conv. 95.

§ 2. **Procedure.**—In procedure, to except to a thing is to object to or challenge it. Thus, to except to bail or sureties is to object to their sufficiency (*see* BAIL, § 10; JUSTIFICATION; Sm. Ac. (11 edit.) 235); and in chancery practice, to except to an answer to interrogatories or affidavit of documents is to object to its sufficiency, which is done by applying to the court or judge on summons or motion to consider the sufficiency of the answer or affidavit. (Dan. Ch. Pr. 1680.) Formerly, in England, if a defendant in a chancery suit put in an insufficient answer to interrogatories, the plaintiff filed exceptions, *i. e.* objections, to it, which were set down in the cause-list and argued in court. (Hunt. Eq. 52.) A similar practice still prevails in those of the States which have retained the Court of Chancery.

§ 3. Where, on the trial of an action by a jury, the judge misdirects the jury as to the law, or on a trial with or without a jury, admits or rejects evidence wrongly, the party aggrieved enters an exception upon the record, and thereupon either makes a motion for a new trial—from the denial of which motion he takes his appeal or sues out his writ of error—or carries the case up by bill of exceptions (*q. v.*) *See* DIRECTION; TRIAL.

EXCEPTION, (defined). 32 Cal. 304; 16 Conn. 474, 482; 3 Wend. (N. Y.) 632, 635.

— (what is not an). 37 N. H. 149, 168; 4 East 469, 476.

— (in a deed). 11 Co. 46, 50 b.

— (in a lease). Carth. 232; Dyer 264 a.

— (distinguished from "reservation"). 16 Conn. 474, 482; 41 Me. 307; 42 Id. 9; 51 Id. 497, 498; 10 N. H. 305, 310; 19 Barb. (N. Y.) 179, 192; 2 Barn. & C. 197, 206; Co. Litt. 47 a.

EXCEPTION ON TRIAL.—*See* EXCEPTION, § 3.

EXCEPTION TO BAIL.—*See* BAIL, § 10; JUSTIFICATION.

EXCEPTIS EXCIPIENDIS.—With all necessary exceptions.

EXCEPTOR.—In old English law, a party who entered an exception, or plea.

EXCERPTA, or EXCERPTS.—Extracts.

EXCESS.—When a defendant pleaded to an action of assault that the plaintiff trespassed on his land, and he would not depart when ordered, whereupon he, *molliter manus imposuit*, gently laid hands on him; the replication of excess was to the effect that the defendant used more force than necessary.

EXCESSIVE DAMAGES.—Damages assessed by a jury in an amount unreasonably large, and beyond the warrant of law. Excessive damages is one of the grounds for a new trial.

Excessivum in jure reprobatur. Excessus in re qualibet jure reprobatur communi (Co. 44): Excess in law is reprehended. Excess in anything is reprehended at common law.

EXCHANGE.—

§ 1. In its widest sense exchange is where A. transfers property to B. in consideration of B. transferring property to A.

§ 2. **Of land.**—At common law an exchange is the mutual conveyance of equal interests in land or other hereditaments, corporeal or incorporeal; by equal interests is meant that the quantity of estate given and taken must be equal, *e. g.* an estate in fee-simple in exchange for an estate in fee-simple. (Co. Litt. 50 a; Shep. Touch. 289.) In England, before the Stat. 8 and 9 Vict. c. 106, an exchange was effected by the mere entry of each party on the land taken by him in exchange, without livery of seisin and without deed, except in the case of hereditaments lying in grant, or of lands situate in different counties; every exchange also implied a warranty, so that if one party was evicted from his newly-acquired land owing to a defect in the title, he could re-enter on the land originally held by him. But now, by the Stat. 8 and 9 Vict. c. 106, every exchange must be by deed, and the implied warranty has been abolished. Wms. Real Prop. 446.

§ 3. **Modern exchange.**—Exchanges at common law have long been practically obsolete, and at the present day an exchange is, in England generally, and in America always, effected by mutual but separate conveyances in the form of ordinary deeds of grant.

§ 4. **By inclosure commissioners.**—By the Act 8 and 9 Vict. c. 118, provision is made for

exchanges of land under the direction of the inclosure commissioners in cases where they have satisfied themselves by inquiries that the proposed exchange will be beneficial to the owners of the respective lands, and that the terms are just and reasonable. They thereupon make an order of exchange, which carries the arrangement of the parties into effect. An application for an exchange can be made by the person in possession of the lands (Stats. 8 and 9 Vict. c. 118, §§ 16, 147; 17 and 18 Vict. c. 97, § 5; Wms. Real Prop. 326, *n.* (m)); but it is not necessary that both parties should have estates equal in duration, for the effect of the exchange is simply to substitute one piece of land for another, so that if lands belong to A. for life, with remainder to B., A. can, by obtaining an order of exchange, effect an exchange with C., a tenant of other lands in fee-simple; then C.'s lands vest in A. for life, with remainder to B. If the lands are not of equal value, the difference in value may be compensated by a perpetual rent-charge on the land which is of lesser value. Stat. 20 and 21 Vict. c. 31, § 6.

§ 5. **Goods.**—An exchange of goods is a transfer of goods from A. to B. in exchange for a transfer of goods from B. to A. Such a transaction, which hardly differs from a sale (*q. v.*), is more commonly called "barter" (*q. v.*) See OWELTY OF EXCHANGE.

EXCHANGE, (defined). 7 Barb. (N. Y.) 633, 638; 2 Bl. Com. 323; 1 Chit. Gen. Pr. 312; Shep. Touch. 289, 290.

—— (contract for, of lands must be in writing). 15 Johns. (N. Y.) 503.

—— (deed of, can be between two contracting parties only). 2 W. Bl. 936; 3 Wils. 483.

—— (distinguished from "partition"). 11 Ves. 467, 476.

—— (of lands). Co. Litt. 51 a; Lofft 402, 416.

—— (power to, is not power to alien). 5 Paige (N. Y.) 318, 445.

—— (power to, warrants a partition). 4 Bro. Ch. 278; 2 Ves. 98.

—— (power to, does not warrant a partition). 8 Com. Dig. 859; 1 Madd. Ch. 214.

—— (synonymous with "sale"). 14 Gray (Mass.) 367, 372; 5 Watts (Pa.) 201.

EXCHANGE, BILL OF.—See BILL OF EXCHANGE.

EXCHANGE OF LIVINGS.—This is effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice. If either die before both are inducted, the exchange is void. 31 Eliz. c. 6, § 8. See Phillim. Ecc. L. 502.

EXCHEAT.—See ESCHEAT.

EXCHEQUER.—LOW LATIN: *scaccarium*, from the chequered cloth, resembling a chess board, which covered the table on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 3 Bl. Com. 44.

§ 1. A public office in England, which formerly consisted of two divisions—the receipt of the

exchequer, and the Court of the Exchequer. The former manages the royal revenue, *i. e.* it receives and keeps the public money, and sees that none of it is paid out except on proper authority. (See TREASURY.) Accordingly, all the principal revenues (*e. g.* those arising from the customs, inland revenue, the post office, &c.,) are paid into the Bank of England to the credit of the exchequer, and payments for the public service are made out of the fund thus formed. By a recent act, the audit department, or office for auditing the public accounts, has been consolidated with the exchequer, and the two departments placed under the management of a comptroller and auditor-general and subordinate officers. Exchequer and Audit Departments Act, 1866. For details, see H. Cox Inst. 678 *et seq.*; 2 Steph. Com. 528. For the history of the exchequer, see Mad. Exch.; Gilb. Exch.

§ 2. **The Court of Exchequer** was originally a court having jurisdiction only in matters concerning the public revenue, *e. g.* in suits by the crown against its debtors; but it afterwards acquired (by the use of fictitious pleadings) jurisdiction in ordinary civil actions between subject and subject. It was formerly subdivided into a court of common law, and a court of equity; but by Stat. 5 Vict. c. 5, its equitable jurisdiction was transferred to the Court of Chancery, except in revenue matters. (Att.-Gen. v. Halling, 15 Mees. & W. 687; see Corporation of London v. Att.-Gen., 1 H. L. Cas. 440; Att.-Gen. v. Metr. D. Railway Co., 5 Ex. D. 218. See, also, INFORMATION). And by the Judicature Acts, 1873, 1875, the jurisdiction of the Court of Exchequer as a court of revenue, as well as a common law court, was transferred to the High Court of Justice. The judges of the Court of Exchequer, and their successors, continued to form a division of the High Court, called the "Exchequer Division," to which all causes which would formerly have been within the exclusive cognizance of the Court of Exchequer were assigned (Judicature Act, 1873, §§ 16, 34), until the three "common law" divisions of the High Court were merged into one. See BARON; HIGH COURT OF JUSTICE.

EXCHEQUER BILLS.—Bills issued by the English government for the purpose of raising temporary loans, generally in anticipation of the supplies granted by parliament, and occasionally, for carrying on public works, &c. They entitle the bearer (or the person named in each bill, if the blank left for that purpose is filled up) to the sum for which they are issued, to be paid at a time to be fixed by advertisement, with interest in the meantime. (H. Cox, Eng. Gov. 193; Johns. Exch. Bills.) They are negotiable instruments. Wookey v. Pole, 4 Barn. & Ad. 1.

EXCHEQUER CHAMBER.—An English court of error, (*i. e.* a court of appeal) from each of the three superior courts of common law, which consisted of the judges of the two courts other than that whose decision was being appealed against. Thus, when error was brought from a judgment of the Queen's Bench, the Exchequer Chamber consisted of the judges of the Common Pleas and the Exchequer, and so

on. By the Judicature Acts, the Exchequer Chamber was abolished, and its jurisdiction was transferred to the Court of Appeal. 3 Steph. Com. 333; Judicature Act, 1873, § 18; Judicature Act, 1875.

EXCISE.—A duty or impost on certain commodities, charged in most cases on the manufacturer; such are duties on spirits, malt, tobacco, &c. There are also duties which, though not properly in the nature of excise, are classed, in England, under this head; such as the licences which are required to be taken out annually by those who manufacture or deal in certain goods, or carry on certain employments, (2 Steph. Com. 565; Inland Revenue Act, 1880;) and also what are more commonly known as assessed taxes, being those payable by persons who use male servants, horses, carriages and armorial bearings. Stat. 32 and 33 Vict. c. 14, pt. 5. See INTERNAL REVENUE; LICENCE.

EXCISE, (defined). 12 Mass. 252, 255, 256.

— (distinguished from "tax"). 11 Allen (Mass.) 268, 274.

— (in constitution of United States). 3 Dall. (U. S.) 171, 173.

EXCISE DUTY, (defined). 1 Bl. Com. 318; 2 Steph. Com. 579.

EXCLUSIA — EXCLUSAGIUM.—A sluice to carry off water; the payment to the lord for the benefit of such a sluice.—Cowell.

EXCLUSIVE — See APPOINTMENT, § 3; JURISDICTION; POWER.

EXCLUSIVE, (defined). 3 Story (U. S.) 122, 131; 8 Blackf. (Ind.) 361, 363.

— (in a verdict construed "over and above"). 1 Yeates (Pa.) 255, 259.

EXCLUSIVE JURISDICTION, (in a statute). 8 Gray (Mass.) 464, 465.

EXCLUSIVE OF COSTS, (defined). 1 Edw. (N. Y.) 583.

EXCLUSIVE OF WATER, (in a deed). 63 Me. 287.

EXCLUSIVE RIGHT, (to license, in city charter). 8 Blackf. (Ind.) 361.

EXCOMMENGEMENT.—Excommunication (*q. v.*) Co. Litt. 134 a.

EXCOMMUNICATION.—

§ 1. An ecclesiastical punishment, being a censure (*q. v.*), whereby the person against whom it is pronounced is for the time cast out of the communion of the church. (Phillim. Ecc. L. 1400; Co. Litt. 133 b.) It is said to be of two kinds—the lesser and the greater.

§ 2. The lesser excommunication deprives the offender of the use of the sacraments and divine worship; this sentence was formerly

passed by judges ecclesiastical, on such persons as were guilty of obstinacy or disobedience in not appearing upon a citation, or not obeying the orders or decrees of the court; but in these cases it is no longer applicable. Stat. 53 Geo. III. c. 127, § 1.

§ 3. The greater excommunication is that whereby men are deprived, not only of the sacraments and the benefit of divine offices, but of the society and conversation of the faithful. (Phillim. Ecc. L. 1400; Co. Litt. 133 b.) It can only be pronounced as a punishment or censure for an ecclesiastical offence. If the person does not submit within forty days after the sentence of excommunication, he may be arrested and imprisoned for any time not exceeding six months by the writ of *de excommunicato capiendo* (*q. v.*), and see SIGNIFICAVIT. Stat. 53 Geo. III. c. 127, § 3.

§ 4. In some cases the court has no discretion, but must pass sentence of excommunication if the offender is found guilty; as where a person in holy orders is found guilty of smiting another in a church. This is sometimes called excommunication *ipso facto*. Stat. 5 and 6 Edw. VI. c. 4; Phillim. Ecc. L. 1401. See BRAWLING.

§ 5. Excommunication, as a punishment for contempt of the decrees of ecclesiastical courts, has been abolished, and that of contumacy (*q. v.*) substituted.

EXCOMMUNICATION, (defined). 3 Bl. Com. 101; 3 Steph. Com. 721.

EXCOMMUNICATO CAPIENDO.—See DE EXCOMMUNICATO CAPIENDO.

EXCOMMUNICATO DELIBERANDO.—See DE EXCOMMUNICATO DELIBERANDO.

Excommunicato interdicatur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri (Co. Litt. 133): Every legal act is forbidden an excommunicated person, so that he cannot act; nor sue any person; but he may be sued by others.

EXCOMMUNICATO RECIPIENDO, or RECAPIENDO.—See DE EXCOMMUNICATO RECIPIENDO.

EXCULPATION, LETTERS OF.—In the Scotch law, a warrant granted at the suit of a prisoner for citing witnesses in his own defence.

EXCUSABLE HOMICIDE.—This is of two sorts, either *per infortunium*, by misadventure, or *se defendendo*, upon a sudden affray. Homicide, *per infortunium*, is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but if death ensue from any unlawful act, the offence is manslaughter, and not misadventure. Homicide, *se defendendo*, is where a man kills another

upon a sudden affray, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling. 4 Bl. Com. 182. *See* HOMICIDE.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus (Bac. Max. r. 15): That may excuse or palliate a wrongful act in capital cases, which would not have the same effect in civil injuries.

EXCUSATIO.—In the civil law, an excuse or reason which exempts from some duty or obligation.

EXCUSATOR.—In old English law, an excuser; one who offered the excuse of another in court.

Excusatur quis quod clameum non opposuerit, ut si toto tempore litigii fuit ultra mare quacunque occasione (Co. Litt. 260): He is excused who does not bring his claim, if, during the whole period in which it ought to have been brought, he has been beyond sea for any reason.

EXCUSE.—A reason alleged for doing or not doing a thing.—*Worcester*.

EXCUSE, (in crimes act). L. R. 1 C. C. R. 284.

EXCUSS.—To seize and detain by law.

EXCUSSIO.—In the civil law, the same as discussion (*q. v.*) in the Scotch and Roman law; also, in old English law, a rescue.

EXEAT.—A permission which a bishop grants to a priest to go out of his diocese; also, leave to go out generally.

EXECUTE—EXECUTED—EXECUTION.—

§ 1. To execute is to complete or carry into effect; execution is the act of doing so. Thus, to execute a deed is to sign, seal and deliver it (*see* DEED); and the Statute of Uses is said to execute a use when a use is carried into effect by being converted into a legal estate. *See* USE.

§ 2. **Execution of power.**—When a person makes an appointment under a power, he is commonly said to execute it, though the term “exercise” is more appropriate. In general a power of appointment requires to be exercised with certain formalities, *e. g.* by deed or by will; when there is an intention to exercise a power, but the formalities have not been complied with, the power is said to be defect-

ively executed. In certain cases, and in favor of certain persons, the court (following the rules of chancery) will aid or supply the defective execution of a power; *i. e.* consider it as having been properly executed, notwithstanding a defect in the formalities, as where there is merely an agreement to execute it, or where it is executed by will instead of by deed; this is sometimes called an “equitable execution.” Wats. Comp. Eq. 814; Sugd. Pow. 530, 549.

§ 3. **Execution of judgment.**—To execute a judgment or order of a court is to carry it into effect or enforce it. Judgments are principally enforced by writs called “writs of execution,” which direct the sheriff or other persons either to do what is required to perform the judgment (*e. g.* to deliver possession of land to a successful plaintiff), or to compel the defendant or other person to do some act which he is required to do. (*See* the titles *CAPIAS*; *DISTRINGAS*; *ELEGIT*; *FIERI FACIAS*; *RETURN*; *SEQUESTRATION*; *WRIT*.) In ordinary parlance, “execution” means execution to recover a debt, that being the most important kind, and hence a creditor or debtor, by or against whom execution has been issued, is called an “execution creditor” or “execution debtor.” *See* CREDITOR; DEBTOR.

§ 4. **Continuing execution** is where the process continues until all that has been commanded to be levied is levied; as in the case of a *sequestrari facias*. Sm. Ac. (11 edit.) 398.

§ 5. **Equitable execution.**—In some cases a judgment may be enforced by means formerly peculiar to Courts of Equity, and hence called “equitable execution.” Thus, if a judgment debtor has an equity of redemption in land (an interest which could not be taken in execution at common law), the court will appoint a receiver of the rents, profits and surplus proceeds of sale of the property for the benefit of the creditor. *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; *Ex parte Evans*, 13 Ch. D. 252.

§ 6. **Quasi-execution.**—There are also some other kinds of proceedings available to enforce or satisfy a judgment, which are hence usually treated of under the

head of execution; such are charging orders, distresses on stock, attachment of debts, &c. See those titles.

§ 7. **Railway stock and plant.**—The English Railway Companies Act, 1867, enacts that the rolling stock and plant of a railway company shall not be liable to be taken in execution; but a judgment creditor of the company may obtain the appointment of a receiver or manager of the company's undertaking; and the net income of the company is then applied in payment of its debts. As to when this power will be exercised, see *In re Manchester and Milford Railway Co.*, 14 Ch. D. 645.

§ 8. **Criminal execution.**—In criminal proceedings, judgment against a prisoner is executed by the sheriff, who causes him to be imprisoned, hanged, or otherwise dealt with according to the sentence. The term "execution," however, is commonly applied to execution of judgment of death by hanging, which is now generally effected within the walls of the prison where the offender is confined.

§ 9. **Execution of writ.**—To execute a writ is to obey the instructions contained in it; thus, a writ of *fi. fa.* is executed by seizing and selling the goods of the debtor. (See RETURN.) Writs are executed either personally, *i. e.* by the persons to whom they are directed, or by a substitute appointed by warrant (*q. v.*)

EXECUTE, (defined). 2 Gr. (N. J.) 350, 352; 5 Moo. P. C. 130, 141.

EXECUTE A DEED, (in an agreement for the sale of land). 12 Johns. (N. Y.) 436.

EXECUTE A PROPER CONVEYANCE FOR THE CONVEYING OF A FEE-SIMPLE, (in a covenant). 23 Wend. (N. Y.) 66.

EXECUTED, (a bond is not, until delivery). 23 Minn. 551.

—— (a deed is not, until delivery). 1 Cro. 122.

—— (in act making lands liable to be sold for payment of debts, means "levied"). 7 Halst. (N. J.) 344.

EXECUTED AND DELIVERED, (in a contract). 101 Mass. 279.

EXECUTED CONSIDERATION.

—A consideration which is executed before the promise upon which it is founded is made, as where A. bails a man's servant, and the master afterwards promises to indemnify A.; but if a man promise to indemnify A. in the event of his bailing his servant, the consideration is then executory. With respect to an executed consideration, the rule is, that if it were not at the precedent request of the promiser, but a merely voluntary courtesy, it will not

suffice to support a promise; therefore, in the first example, the promise would not be binding, unless the bailing were at the master's precedent request. *Smith Cont.*; and notes to *Lampleigh v. Braithwait*, 1 Sm. Lead. Cas. (6 edit.) 139.

EXECUTED CONTRACT.—

See CONTRACT, § 13.

EXECUTED CONTRACTS, (distinguished from "executory contracts"). 15 Johns. (N. Y.) 349, 351; 2 Bl. Com. 443.

EXECUTED ESTATES.—Estates in possession.

EXECUTED FINE.—The *fine sur cognizance de droit, come ceo que il ad de son done*; or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by 3 and 4 Will. IV. c. 74.

EXECUTED, HAS, UNTO, (imports both making and delivery). 9 Cal. 430, 452.

EXECUTED REMAINDER.—A vested remainder (*q. v.*)

EXECUTED REMAINDER, (defined). 2 Bl. Com. 168.

EXECUTED TRUST.—When an estate is conveyed to the use of A. and his heirs, with a simple declaration of trust for B. and his heirs, or the heirs of his body, the trust is perfect; and it is said to be executed, because no further act is necessary to be done by the trustee to raise and give effect to it; because there is no ground for the interference of a court of equity to affix a meaning to the words "declaratory of the trust," which they do not legally import. (1 Sand. Us. 335.) As all trusts are executory in this sense, that the trustee is bound to dispose of the estate according to the tenure of his trust, whether active or passive, it would be more accurate and precise to substitute the terms "perfect" and "imperfect" for "executed" and "executory" trusts. 1 Hayes Conv. 85.

EXECUTED USE.—The first use in a conveyance upon which the Statute of Uses operates by bringing the possession to it, the combination of which, *i. e.* the use and the possession, form the legal estate, and thus the statute is said to execute the use.

EXECUTED WRIT.—*See* EXECUTE, § 9.

EXECUTING A POWER, (what is not). 9 East 296.

Executio est executio juris secundum judicium (3 Inst. 212): Execution is the execution of the law according to the judgment.

Executio est finis et fructus legis (Co. Litt. 289): Execution is the end and fruit of the law.

Executio juris non habet injuriam (2 Roll. 301): The execution of law does no injury.

EXECUTION, (defined). 2 Gr. (N. J.) 90, 94; 1 Ashm. (Pa.) 383.

—— (of a deed, implies signing, sealing and delivering). 17 Ohio 545, 552.

—— (of a deed, proof of). 1 Cox (N. J.) 11; 1 Stark. Ev. 332.

—— (of a lease). 1 T. R. 86.

—— (of indenture of apprenticeship). 1 Gr. (N. J.) 221.

—— (of note). 37 Mich. 459.

—— (writ of). 14 Mich. 382; 15 *Id.* 328.

—— (what is a delivery to a sheriff). 1 Harr. (N. J.) 254; 5 Mod. 376.

—— (priority of). 17 Johns. (N. Y.) 274.

EXECUTION OF CRIMINAL.—*See* EXECUTE, § 8.

EXECUTION OF HIS OFFICE, (in a statute). 2 Chit. Gen. Pr. 64.

EXECUTION OF POWER.—*See* EXECUTE, § 2.

EXECUTION OF STATUTES.—The Court of Star Chamber, erected in the reign of King Henry VII., was said to be for the execution of statutes, &c. (Stat. 3 Hen. VII. c. 1.)—*Jacob.*

EXECUTION, QUASI, (meaning of). 3 Ves. & B. 105, 107.

EXECUTION, WRIT OF.—*See* EXECUTE.

EXECUTIONE FACIENDA IN WITHERNAMIIUM.—*See* DE EXECUTIONE FACIENDA, &c.

EXECUTIONE JUDICII.—*See* DE EXECUTIONE JUDICII.

EXECUTIONER.—He that inflicts capital punishment; he that puts to death according to the sentence of the law.

EXECUTIVE.—That branch of the government which puts the laws into execution, as distinguished from the legisla-

tive and judicial branches. The body that deliberates and enacts laws is legislative; the body that judges and applies the laws in particular cases is judicial, and the body that carries the laws into effect, or superintends the enforcement of them, is executive. The executive authority, in all monarchies, is vested in the sovereign, while in the United States it is vested in the president and the governors of the several States.

EXECUTIVE AUTHORITY, (meaning of). 9 Gray (Mass.) 262, 267.

EXECUTIVE OFFICER, (who is). 4 Cal. 127, 146.

EXECUTIVE OR MINISTERIAL OFFICER, (who is not). 9 Bush (Ky.) 541.

EXECUTOR.—

§ 1. An executor is the person to whom the execution of a will of personal estate, *i. e.* the duty of carrying its provisions into effect, is confided by the testator. The duties of an executor are to bury the deceased, to collect the estate, and, if necessary, convert it into money; to pay the debts in their proper order, then to pay the legacies and distribute the residue among the persons entitled. For these purposes he may bring actions against persons who are indebted to the testator, or are in possession of property belonging to the estate. Some of these things, however, can only be done by him after he has proved the will. (*See* PROBATE.) When several executors are appointed, and only some of them prove the will, these are called the proving or acting executors. Wms. Ex. 218; 2 Bl. Com. 503; Browne Prob. Pr. 207.

§ 2. Married women and infants may be appointed and act as executors. In the case of an infant, however, letters of administration *durante minore ætate* require to be taken out to carry on the administration of the estate until he attains majority. *See* GRANT.

§ 3. **Nominate**—According to the **tenor.**—An executor nominate is one appointed expressly by the word “executor;” an executor according to the tenor of the will is one appointed by inference; for if by any words the testator recommends or commits to a person the rights and duties which appertain to the office of executor, (as where he says, “I commit

all my goods to the disposition of A. B.,") it is equivalent to an express appointment. Wms. Ex. 230; Brown Prob. Pr. 133; In the goods of Bell, 4 P. D. 85.

§ 4. **De son tort.**—An executor *de son tort* (*de son tort d'emesme*, of his own wrong,) is one who, being neither executor nor administrator, intermeddles with the goods of the deceased, or does any other act characteristic of the office of executor. When a man has so acted, he renders himself liable, not only to an action by the rightful executor or administrator, but also to be sued by a creditor or legatee of the deceased. (Wms. Ex. 247 *et seq.*) He has all the liabilities, though none of the privileges, which belong to the character of executor. (*Id.* 255.) As to the meaning of the obsolete expressions *executor a lege constitutus*, and *executor ab episcopo constitutus*, or *executor dativus*, see *Id.* 218.

§ 5. **Executor's year.**—An executor is generally allowed a year to realize the testator's estate before being bound to distribute it. Consequently interest does not begin to run on legacies until after the expiration of a year from the testator's death, unless the will contains some special directions on the subject. (As to the payment of debts and distribution of the estate, see ADMINISTRATION, § 2; ASSETS.) Strictly speaking, an executor is bound to satisfy all just claims on the estate before distributing it among the legatees and other beneficiaries, whether he has had notice of such claims or not, and also to provide for all future and contingent liabilities arising out of the testator's estate, such as calls on shares, rents and covenants under leases and the like. These responsibilities, however, have been considerably reduced by modern statutes.

§ 6. **Power to sell lands for payment of debts and legacies.**—Where a testator charges his real estate with the payment of his debts or legacies, and does not make any express provision for raising them, his executor may do so by sale or mortgage of the lands, unless the testator has devised them in such a manner that his whole estate and interest in them has become vested in trustees, in which case they are the persons to exercise the power of sale or mortgage. (As to the implied

power of executors to sell independently of the statute, see Wms. Real Prop. 221; Shelf. R. P. Stat.) No such implied or statutory power, nor an express power to sell real estate, can [in England] be exercised by an administrator, even if acting under letters of administration with the will annexed. *In re Clay and Tetley*, 16 Ch. D. 3.

§ 7. **Transmission of office.**—If an executor dies before the estate is completely administered, having by his will appointed an executor, the executor so appointed is also executor of the original testator. But if an executor dies without having appointed an executor, letters of administration *de bonis non* must be taken out. (See GRANT.) Frequently the office of trustee is combined with that of executor. See TRUSTEE.

Numerous powers have been conferred on executors in England by modern acts of parliament, the principal of which are as follows:

§ 8. **Statutory powers.**—Under Stat. 22 and 23 Vict. c. 35, § 29, where an executor or administrator has given such or the like notices for creditors and others to send in to him their claims against the estate of the testator, as would have been given by the Chancery Division of the High Court in an action to administer the testator's estate, then the executor may, at the expiration of the time named in the notices, distribute the assets without being liable for any claims of which he has not received notice; but this provision does not affect the right of any creditor or claimant to follow the assets into the hands of any person who may have received them (*e. g.* a legatee). (Shelf. R. P. Stat. 720.) Notices to creditors under this section are given by advertisement in the *London Gazette* and the principal newspapers circulating in the places where the testator resided and carried on business. Similar provisions as to notices to creditors will be found in the statute books of the several States.

§ 9. **Liabilities under leases, &c.**—Under Stat. 22 and 23 Vict. c. 35, § 27, where an executor or administrator has assigned to a purchaser a lease held by the testator, he is not bound to set aside a fund to answer future claims under the lease, unless it contains a covenant or agreement by the lessee to lay out a fixed sum on the property at some future time, in which case he is bound to set aside a sufficient fund for the purpose. But this provision does not affect the right of the lessor to follow the assets of the deceased into the hands of the persons among whom they have been distributed. *Id.* 718. Section 28 contains a similar provision as to lands held by a testator in fee-simple subject to rent-charges or the like.

§ 10. **Petition for opinion of the court.**—Under Section 29 of the same act, an executor, administrator or trustee may, without the

institution of an action, apply by petition or summons to a judge of the Chancery Division, for the opinion, advice or direction of the court on any question respecting the management or administration of the assets, and he is protected from responsibility if he acts upon the opinion, advice or direction thus given, provided it was obtained without misrepresentation or concealment. Shelf. R. P. Stat. 721.

§ 11. **Power to compromise, &c.**—Under Stat. 23 and 24 Vict. c. 145, § 30, executors are empowered to pay debts or claims upon any evidence they think sufficient, and to accept any composition or security for any debts due to the deceased, and to allow time for payment of any debts, and also to compromise, compound or submit to arbitration all debts, accounts, claims, &c., relating to the estate of the deceased, without being responsible for any loss occasioned thereby. *Id.* 740. See RENUNCIATION; SYNDIC; WILL.

§ 12. If, notwithstanding these provisions, an executor cannot safely administer an estate without the supervision of the court, he may institute an action in the Chancery Division for the administration of the estate, in which he will act in accordance with the directions of the court, and thus escape responsibility. See ACTION, § 9, and the titles there referred to, and title DISCRETION.

EXECUTOR, (bond given by). 1 Dall. (U. S.) 347 *n.*; 5 Wheel. Am. C. L. 298 *n.*

—— (cannot indorse promissory note belonging to the estate). 7 Wheel. Am. C. L. 175, 176.

—— (cannot purchase at his own sale). 2 Blackf. (Ind.) 377; South. (N. J.) 847 *n.*; 1 McCord (S. C.) Ch. 252.

—— (deed made by). 5 Wheel. Am. C. L. 343.

—— (growing crops go to). 2 Dev. (N. C.) Eq. 420, 422.

—— (legacy to). 4 Desaus. (S. C.) 215; 4 Beav. 222.

—— (when fixtures go to). Freem. 248.

—— (when used as "administrator"). 97 Mass. 34, 401.

EXECUTOR DE SON TORT.—See EXECUTOR, § 4.

EXECUTOR DE SON TORT, (what acts will make an). 30 Conn. 329; 4 Harr. (Del.) 168; R. M. Charlt. (Ga.) 383; Dudley (Ga.) 167; 38 Ga. 264; 3 Litt. (Ky.) 163; 5 J. J. Marsh. (Ky.) 170, 172; 26 Me. 361; 15 N. H. 137; 1 Browne (Pa.) 361; 2 McCord (S. C.) 516; 3 Rich. (S. C.) 413.

—— (when there can be no). 12 Conn. 213, 216.

—— (how he may discharge himself from liability). 28 N. H. 473.

EXECUTOR LUCRATUS.—An executor who has assets of his testator, who, in his life-time, made himself liable by a wrongful interference with the property of another. Davidson v. Tulloch, 6 Jur. n. s. 543.

EXECUTOR OF AN EXECUTOR.—See EXECUTOR, § 7.

EXECUTORS, (appointment of). 1 Hagg. Ecc. 80.

—— (bequest to). 5 Madd. Ch. 455; 6 Sim. 72.

—— (devise of lands to, to sell for payment of debts). 1 Marsh. (Ky.) 214, 215.

—— (general judgment against). 2 Gr. (N. J.) 283.

—— (indorsement of a bill of exchange to). 1 T. R. 489.

—— (in a will). 67 Pa. St. 446.

—— (legacy to). 17 Ves. 462, 466.

—— (liability of). South. (N. J.) 359, 360; 6 Watts (Pa.) 185; Toll. Ex. 463.

—— (may compromise a law suit). 3 Gr. (N. J.) 392.

—— (of an administrator, are not to account as representatives of the intestate). Penn. (N. J.) 562.

—— (promissory note given by). 5 Moo. 282.

—— (promissory note payable to). 5 Wheel. Am. C. L. 230.

—— (power to sell land). Penn. (N. J.) 35, 39.

EXECUTORSHIP EXPENSES, (in a will). 10 Ch. D. 468.

EXECUTORY.—That which remains to be carried into effect, as opposed to executed (*q. v.*)

EXECUTORY BEQUEST.—See BEQUEST, § 3.

EXECUTORY BEQUEST, (of chattels or money). 2 Gr. (N. J.) 170.

EXECUTORY CONSIDERATION.—See CONSIDERATION, § 5.

EXECUTORY CONTRACT.—See CONTRACT, § 13.

EXECUTORY CONTRACTS, (distinguished from "executed contracts"). 5 Otto (U. S.) 679, 683.

EXECUTORY DEVISE.—See DEVISE, § 3.

EXECUTORY DEVISE, (defined). 11 Wend. (N. Y.) 259, 278; 2 Bl. Com. 172; Fearne Rem. 33; 1 Steph. Com. 564.

—— (what is). 13 Wend. (N. Y.) 437, 441.

—— (what is not). 4 Wheel. Am. C. L. 425 *n.*

EXECUTORY ESTATES.—Interests which depend for their enjoyment upon some subsequent event or contingency. These are capable of being assigned. See EXECUTORY INTERESTS.

EXECUTORY FINES.—The fines *sur cognizance de droit tantum*; *sur concessit*, and *sur done, grant et render*. Abolished by 3 and 4 Will. IV. c. 74.

EXECUTORY INTERESTS.—

§ 1. The term “executory interests” includes all future estates and interests in land or personalty, other than reversions and remainders.

§ 2. **In land; by way of use.**—As to executory interests in land, they are created either under the Statute of Uses, or by will. Executory interests under the Statute of Uses are created by springing or shifting uses, a common instance of which occurs in an ordinary marriage settlement. Thus, supposing A. to be the settlor, the lands are conveyed by him to the trustees, B. and C. and their heirs, to the use of A. and his heirs, until the intended marriage shall be solemnized, and immediately after the solemnization thereof, to the use of D., the intended husband, for life, and so on. Until the marriage takes place, A. continues to be tenant in fee-simple of the land, and D. has an executory interest. It is not a contingent remainder, for the estate which precedes it, that of A., is an estate in fee-simple. As soon as the marriage takes place, the seisin of the land shifts away from A., and vests in D. for his life. Wms. Real Prop. 279.

§ 3. **By will.**—Executory interests in land created by will are called “executory devises.” See DEVISE, § 3.

§ 4. **In personalty.**—Executory interests in personalty are created either by conveyance *inter vivos*, or by will. In the latter case, they are sometimes called “executory bequests” (Wms. Pers. Prop. 260), formerly, “executory devises.” (Fearn Rem. 418.) In the wide sense of the word, “executory interest” includes interests in personal property analogous to remainders and reversions in land; but such interests are sometimes called “remainders” and “reversions,” as if they were estates in land. Thus, if stock is transferred or bequeathed to trustees in trust for A. for life, and after his death to B., the interest of B. might be called either a “remainder” or an “executory interest.”

§ 5. Executory interests must not transgress the rule against perpetuities, or (in

England) the provisions of the Thellusson Act. See those titles.

EXECUTORY REMAINDER.—A contingent remainder, because no present interest passes.

EXECUTORY REMAINDERS, (defined). 2 Bl. Com. 169.

EXECUTORY TRUSTS.—In the case of articles of agreement, made in contemplation of marriage, and which are consequently preparatory to a settlement, and in the case of those wills which are merely directory of a subsequent conveyance, the trusts declared by them are said to be executory or imperfect, because they require an ulterior act to raise and perfect them. They are rather considered as instructions for settlements, than as instruments in themselves complete; and therefore equity, in order to promote the presumed views of the parties in the one case, and to support the manifest intention of the testator in the other, will attach to the words, expressive of the trusts, a more liberal and enlarged construction than they would admit if applied either to the limitation of a legal estate or a trust executed. 1 Sand. Us. 237.

EXECUTORY TRUSTS, (distinguished from trusts executing themselves). 4 H. L. Cas. 1, 210.

EXECUTORY USES.—Springing uses, which confer a legal title answering to an executory devise; as when a limitation to the use of A. in fee, is defeasible by a limitation to the use of B., to arise at a future period, or on a given event.

EXECUTORY USES, (what are). 1 Steph. Com. 502.

EXECUTRIX.—A female executor.

Exempla illustrant non restringunt legem (Co. Litt. 240): Examples illustrate, but do not restrain the law.

EXEMPLARY DAMAGES.—Damages on an unsparing scale, given in respect of tortious acts, committed through malice or other circumstances of aggravation. See DAMAGES, § 4.

EXEMPLARY DAMAGES, (in a suit for libel). 1 Abb. (N. Y.) Pr. 289, 304.
— (synonymous with “punitive damages”). 80 Ill. 283.

EXEMPLARY DAMAGES, (what are). 56 N. H. 456.

—— (when recoverable). 53 N. H. 342.

EXEMPLI GRATIA.—See E. G.

EXEMPLIFICATION.—An official copy of a document made under the seal of a court or public functionary. Thus, an exemplification of a will or probate is a copy under the seal of the Probate Court; an exemplification of letters-patent, or of a private statute, is under the seal of the patent office, or department of state, respectively. An exemplification is generally admissible evidence to prove the original document. See COPY; INSPEXIMUS.

EXEMPLIFICATIONE.—See DE EXEMPLIFICATIONE.

EXEMPLUM.—In the civil law, copy; a written authorized copy. This word is also used in the modern sense of example: *ad exemplum constituti singulares non trahi*, exceptional things must not be taken for examples.—*Calv. Lex.*

EXEMPTION.—Immunity; freedom from taxes and imposts; a privilege to be free from service or appearance; non-liability to attachment or execution.

EXEMPTION, (in a statute). 24 Ohio St. 206.

EXEMPTION, WORDS OF.—It is a maxim of law, that words of exemption are not to be construed to import any liability: the maxim *expressio unius exclusio alterius*, or its converse *exclusio unius inclusio alterius*, not applying to such a case. For example, an exemption of the crown from the Bankruptcy Act, 1869, in one specified particular, would not inferentially subject the crown to that act in any other particular.—*Brown*.

EXEMPTS.—Persons not bound by law.

EXENNium, or **EXHENIUM**.—A gift; a new year's gift.—*Cowell*.

EXEQUATUR.—A permission by a government to the consul of another State to enter upon the discharge of his functions in the country of the government giving the *exequatur*. Man. Int. Law 113.

EXERCISE.—To make use of. Thus, to exercise a right or power, is to do something which it enables me to do. A power of appointment is exercised by making an

appointment under it. See ENJOYMENT; EXECUTION, § 2.

EXERCISE A TRADE, (covenant not to). 2 W. Bl. 856; 3 Wils. 380.

EXERCISING A TRADE, (what is). 3 Mod. 313
—— (in a statute). 1 Burr. 2, 8.

EXERCITALIS.—A soldier; a vassal.—*Spel. Gloss.*

EXERCITOR NAVIS.—The temporary owner or charterer of a ship.

EXERCITORIA ACTIO.—In the civil law, an action which lay against the employer or managing owner of a ship, founded on acts of the master. 3 Kent Com. 161.

EXERCITORIAL POWER.—The trust given to a shipmaster.

EXERCITUAL.—A heriot, paid only in arms, horses, or military accoutrements.

EXERCITUS.—In old European law, an army; an armed force.

EXETER, or **EXON, DOMESDAY**.—The name given to a record preserved among the muniments and charters belonging to the dean and chapter of Exeter cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon and Cornwall. The Exeter Domesday was published, with several other surveys nearly contemporary, by order of the commissioners of the public records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816.—*Wharton*.

EXFREDIARE.—To break the peace; to commit open violence.—*Spel.*

EXHÆREDATIO.—The act of disinheriting; the exclusion of a child by his father from the inheritance of any part of his estate. See Sand. Just. (5 edit.) liii. 178-185.

EXHÆRES.—One who is disinherited.

EXHIBERE.—To produce a thing in tangible form; to show openly. Also, to appear and defend in person in an action at law.

EXHIBIT.—

§ 1. When it is wished to put a document or movable thing in evidence by affidavit, a reference to it is made in the affidavit, as being marked in some way for identification, and as having been produced to the deponent at the time of his swearing to the affidavit; the document is marked in the way mentioned in the affidavit, generally with some letter of the alphabet; a memorandum referring to the affidavit is also

written on it, and signed by the commissioner or person before whom the affidavit is made. The document is thenceforth called an "exhibit," from the Latin *exhibere*, to produce or show. Hunt. Eq. 80.

§ 2. Documents introduced in evidence on a jury trial or trial before a judge or referee, and which need to be identified for purposes of an appeal.

EXHIBIT, (defined). 16 Ga. 67, 72.
—— (in a statute). 10 Barb. (N. Y.) 216, 218.

EXHIBITANT.—A person who exhibits anything, as a complainant in articles of the peace.

EXHIBITING A COMPLAINT IN CRIMINAL CASES, (what is). 2 Conn. 38, 40.

EXHIBITION.—(1) An allowance for meat and drink, usually made by religious appropriators of churches to the vicar; (2) the benefaction settled for the maintaining of scholars in the universities, not depending on the foundation; (3) an action, in Scotch law, for compelling the production of writings.

EXIGENCE, or **EXIGENCY** (probably a corruption of *exigents*, vitiated by an unskillful pronunciation).—Demand, want, need.

EXIGENDARIES.—See **EXIGENTER**.

EXIGENT, or **EXIGI FACIAS**.—A judicial writ used in England, in obtaining the outlawry of a person; it requires the sheriff to exact the defendant, *i. e.* to call on him, at five successive sheriff's county courts, (or, in the city of London, at five successive hustings,) to appear and answer the plaintiff; if he makes default after being exacted five times, he is outlawed. Chit. Gen. Pr. 1311. See **OUTLAW**.

EXIGENTER.—An officer of the Court of Common Pleas, who makes all *exigents*, proclamations, &c.—Cowell.

EXIGI FACIAS.—See **EXIGENT**.

EXIGIBLE.—Demandable, requirable.

EXILE.—Banishment; the person banished.

EXILIUM.—(1) Spoiling. Fleta distinguishes between *vastum*, *destructio* and *exilium*, for he tells us that *vastum* and *destructio* are almost the same, and are properly applied to houses, gardens or woods; but *exilium* is where servants are enfranchised, and afterwards unlawfully turned out of their tenements. (Fleta l. 1, c. 11.) (2) Exile.

Exilium est patriæ privatio, natalis soli mutatio, legum nativarum amissio (7 Co. 20): Exile is a privation of country, a change of natal soil, a loss of native laws,

EXISTENCE BY ACTUAL BIRTH, (in statute punishing infanticide). 10 Tex. App. 270 *et seq.*

EXISTIMATIO.—(1) The civil reputation of a Roman citizen. (2) The award or decision of an arbiter.

EXISTING, (in a statute). 63 Ill. 117.

EXISTING CREDITORS, (in mortgage act). 38 Iowa 215.

EXISTING LAWS, (in a statute). 5 Ind. 525, 526.

EXIT WOUND.—The wound which a weapon, which has passed through the human body, or a portion thereof, makes in coming out. 2 Beck Med. Jur. 119.

EXITUS.—(1) Children; offspring. (2) The rents, issues and profits of lands and tenements. (3) An export duty. (4) The conclusion of the pleadings. See **ISSUE**.

EXITUS, (defined). Hob. 66.

EXLEGALITUS.—He who is prosecuted as an outlaw.—*Jacob*.

EXLEX.—An outlaw.—*Spel. Gloss*.

EXOINE—ESSOIGNE.—See **ESSOIN**.

EXONERATION is where a person or estate is relieved from a liability, by the liability being thrown on another person or estate. The term is chiefly used with reference to questions arising in the administration of estates of deceased persons (and the release of bail, as to which last see **EXONERATUR**). Thus, if a testator directs his debts to be paid primarily out of his real estate, this exonerates his personality from liability to the debts. (Duke of Lancaster *v.* Mayer, 1 Bro. Ch. 454; 1 White & T. Lead. Cas. 564; Wals. Comp. Eq. 1321; Forrest *v.* Prescott, L. R. 10 Eq. 545.) So, if a married woman joins in mortgaging her land to secure money raised for the benefit of her husband, she is entitled on his death to be exonerated from the charge by causing the debt to be paid out of her husband's estate. 2 Fish. Mort. 682; 2 White & T. Lead. Cas. 919.

As to the exoneration of the personal estate of a deceased person from the liability to satisfy a mortgage debt charged on his real estate, see **CONTRIBUTION**, § 3; *also*, **LOCKE KING'S ACT**; **MARSHALLING**.

EXONERATION, (of personal estate from payment of legacies). 2 Dru. & W. 59.

EXONERATIONE SECTÆ.—*See* DE EXONERATIONE SECTÆ.

EXONERETUR.—Let him be discharged.

§ 1. In **American practice.**—An entry made by order of a judge on a bail-piece, where the bail are discharged from liability either by surrender of their principal, or otherwise.

§ 2. In **English practice.**—In an action in the Mayor's Court, an *exoneretur* is an entry made on the recognizance of bail, when the action has been withdrawn or settled (Brand. For. Att. 109), and operates as a discharge of the bail from their liability. In the days when arrest on *mesne* process existed in ordinary actions in the superior courts, an *exoneretur* was entered on the bail-piece or filacer's book, if the defendant was rendered to prison, because the bail was thereby discharged. Tidd. Pr. 288.

EXORDIUM.—The beginning or introductory part of a speech.

EXPATRIATION takes place when a person loses his nationality, and renounces his allegiance to his native country by becoming the subject of a foreign State. Expatriation by a British subject has been made possible by the Naturalization Act, 1870. *Udny v. Udny*, L. R. 1 Sc. & D. App. 441. As to the American doctrine, *see* U. S. Rev. Stat. §§ 1999, 2000. *See* EXUERE PATRIAM; NATURALIZATION; REPATRIATION.

EXPATRIATION, (defined). 2 Cranch (U. S.) 280, 302.

— (when permitted). 3 Dall. (U. S.) 133, 163.

EXPECTANCY.—Contingency; relating to something *in futuro*.

EXPECTANT.—Having relation to, or dependent upon, a contingency.

EXPECTANT ESTATES.—Interests to come into possession and be enjoyed *in futuro*; they are of two sorts at common law—reversions and remainders. 2 Bl. Com. 163. *See* FUTURE ESTATES.

EXPECTANT ESTATES, (defined). 19 Mich. 116, 123.

— (what includes). 20 Barb. (N. Y.) 455, 462.

— (in a statute). 7 Paige (N. Y.) 70, 76.

EXPECTANT HEIR.—An expectant heir, in the language of equity, is a person who, having a reversionary right or hope of succession to property, but little or no

property immediately available, is exposed to the temptation of selling or mortgaging his right or expectation on unreasonable terms, (*e. g.* for much below its value, or at a usurious rate of interest,) and is, therefore, considered as entitled to the protection of the court against the enforcement of such "catching bargains," as they are called. (*Earl of Chesterfield v. Janssen*, White & T. Lead Cas. 483; Poll. Cont. 529; *Earl of Aylesford v. Morris*, L. R. 8 Ch. 484; *Nevill v. Snelling*, 15 Ch. D. 679.) Thus, where a man twenty-six years of age, entitled to a reversion of £600, but wholly without present means, applied to a money-lender, who advanced him £85 on a mortgage of the reversion for £100, with a provision that if default should be made in payment of the £100, it should bear interest at 5 per cent. per month; it was held, that the mortgagor was entitled to a decree for redemption of his reversion on payment of the sum borrowed and simple interest at 5 per cent. per annum. (*Beynon v. Cook*, L. R. 10 Ch. 389.) The term "expectant heir" is used, not in its literal meaning, but as including every one who has either a vested remainder or a contingent remainder in a family property, including a remainder in a portion, as well as a remainder in an estate, and every one who has the hope of succession to the property of an ancestor, either by reason of his being the heir apparent or presumptive, or by reason merely of the expectation of a devise or bequest on account of the supposed or presumed affection of his ancestor or relative. *Id.* 391 n. (1); *see, also*, *O'Rorke v. Bolingbroke*, 2 App. Cas. 814. *See* FRAUD, § 8; REVERSIONARY; UNDUE INFLUENCE.

EXPECTATION.—In the doctrine of chances, expectation is applied to any contingent event, upon the happening of which some benefit is expected. This is capable of being reduced to the rules of computation; for a sum of money in expectancy when a particular event shall happen, has a determinate value before that event happens. Expectation of life, in the doctrine of life annuities, is the share or number of years of life which a person of a given age may, upon an equality of chance, expect to enjoy.

EXPECTATION, (words of, in a will). 2 Myl. & K. 197.

EXPEDIMENT.—The whole of a person's goods and chattels, bag and baggage.

Expedit reipublicæ ne sua re quis male utetur (Inst. 1, 8, 2): It is for the public good that no one use his property badly.

Expedit reipublicæ ut sit finis litium (Co. Litt. 303): It is for the public good that there be an end of litigation.

EXPEDITATÆ ARBORES.—Trees rooted up or cut down to the roots.—*Fleta* 1, 2, c. xli.

EXPEDITATE.—To cut out the ball of a dog's fore-feet, for the preservation of the royal game.—*Manw.* c. xvi.

EXPEDITIO.—An expedition; an irregular sort of army.

EXPULLED, HE SHALL BE, (in charter of a corporation). 2 Serg. & R. (Pa.) 141.

EXPENDITORS.—Persons appointed in England by commissioners of sewers to pay, disburse or expend the money collected by the tax for the repairs of sewers, &c., when paid into their hands by the collectors, on the reparations, amendments and reformations ordered by the commissioners, for which they are to render accounts when thereunto required. See Statute of Sewers, 23 Hen. VIII. c. 5.

EXPENSÆ LITIS.—Costs of suit. See COSTS.

EXPENSES, (what are). 56 Ga. 264.
—— (in a will). 4 Halst. (N. J.) Ch. 506, 510.

—— (in arbitration bond). 10 Mass. 442, 449.

—— (distinguished from "legal costs"). 15 Serg. & R. (Pa.) 45, 55.

EXPENSES INCIDENT TO THE ESTATE, (in a will). 9 C. E. Gr. (N. J.) 359.

EXPENSES, NECESSARY, (in judge's charge to a jury). 3 Whart. (Pa.) 316, 329.

EXPENSES OF ADMINISTRATION, (what are not). 56 Ga. 655.

EXPENSES OF EXECUTION, (what are). 9 Moo. 425.

EXPENSIS MILITUM NON LEVANDIS, &c.—An ancient writ to prohibit the sheriff from levying any allowance for knights of the shire, upon those who held lands in ancient demesne.—*Reg. Orig.* 261.

EXPENSIVE, (defined). 31 Conn. 495, 499.

Experientia per varios actus legem facit. Magistra rerum experientia (Co. Litt. 60): Experience by various acts makes law. Experience is the mistress of things.

EXPERTS.—(1) Sworn appraisers; (2) witnesses who, having superior knowledge, give evidence upon matters of science; (3) professed judges of handwriting.

EXPERTS, (defined). 18 Ind. 329; 33 Me. 446, 450; 45 Id. 392, 394; 52 Id. 68, 77; 41 N. H. 547; 50 Id. 452, 453.

EXPIATION.—Robbery; the act of committing waste upon land to the loss of the heir; also abstracting the goods of a succession.

EXPIATOR.—A robber, or plunderer.

EXPIRATION.—Cessation; termination; as the expiration of a lease, or statute, and the like.

EXPIRATION, (synonymous with "end"). Plowd. 198.

EXPIRATION OF THE POLICY, (in charter of an insurance company). 2 Mass. 318, 327.

EXPIRATION OF THIRTY DAYS, (construed). 2 Hill (N. Y.) 355.

EXPIRY OF THE LEGAL.—In the Scotch law, the expiration of the time within which the subject-matter of an adjudication may be redeemed on payment of the debt in the decree adjudicated.—*Bell Dict.*

EXPLEES.—See ESPLEES.

EXPLETA, EXPLETIA, or EXPLECIA.—In old records, the rents and profits of an estate.

EXPLICATIO.—The fourth pleading in the civil law; equivalent to the common law surrejoinder.—*Calv. Lex.*

EXPLORATION, (what is not an). 10 C. E. Gr. (N. J.) 384, 388.

EXPLORATOR.—A scout, huntsman, or chaser.

EXPLOSION, (in a policy of insurance). 22 Ohio St. 340, 347; L. R. 3 Ex. 71.

—— (of steam boiler, distinguished from "rupture"). 44 N. Y. 146, 151.

EXPORT, (defined). 5 Harr. (Del.) 501, 502.

EXPORTATION.—The act of sending or carrying goods and merchandise from one country to another. See IMPORTATION.

EXPORTATION, (in United States statutes). 11 Month. L. Rep. n. s. 273, 274.

—— (in a bond). 11 Price 204.

—— (in a statute). L. R. 9 Q. B. 457; 5 Taunt. 533.

EXPORTED FROM A PORT, (in a statute). Wilberf. Stat. L. 122.

EXPORTS, (what are). 3 Woods (U. S.) 408

EXPOSE.—To show publicly; to exhibit.

EXPOSE, (defined). 5 Mich. 71, 90.

EXPOSE TO SALE, (in a statute). 13 Wend. (N. Y.) 425, 429; 75 Pa. St. 246, 256.

EXPOSING in a public thoroughfare, a person infected with a contagious disease is a common nuisance and punishable accordingly. 4 Steph. Com. (7 edit.) 271. See **ABANDONMENT**, § 4.

Expositio, quæ ex visceribus causæ nascitur est aptissima et fortissima in lege (10 Co. 24): That exposition, which springs from the vitals of a cause, is the fittest and most powerful in law.

EXPOSITION.—Explanation; interpretation.

EXPOSURE OF THE PERSON.

—See **INDECENT EXPOSURE**.

EXPOSURE OF THE PERSON, (defined). 1 Bish. Cr. L. § 1127.

EXPRESS.—An act evidencing intention is said to be express when it is done with the direct object of communicating the intention, as opposed to implication (*q. v.*) The communication may be effected by speech, writing or gestures; thus, a promise in these words, "I promise to pay you \$50," is express, whether verbal or written. If A. signifies his assent to a proposal by nodding or other gestures, the communication is still express; therefore the acceptance of a bid by an auctioneer is express when it is evidenced by the fall of his hammer. See generally on the subject, 3 Sav. Syst. 242 *et seq.* See, also, **CONSTRUCTIVE**; **IMPLICATION**; **TACIT**.

EXPRESS ABROGATION.—A direct repeal of an existing law, by a subsequent statute, which refers to the law repealed.

EXPRESS ASSUMPSIT.—A direct undertaking to do some act, or to pay a sum of money. See **ASSUMPSIT**, § 1.

EXPRESS COMPANY.—A firm or corporation engaged in the business of transporting packages of portable property. They are common carriers.

EXPRESS CONDITION.—See **CONDITION**, § 4.

EXPRESS CONSIDERATION.—

One which is distinctly declared by the terms of the contract itself, as a contract to sell land for a designated sum.

EXPRESS CONTRACT.—See **CONTRACTS**, § 3.

EXPRESS MALICE, (defined). 1 Dak. T. 451, 459; 4 Bl. Com. 195.

EXPRESS TRUST.—One declared in express terms, as distinguished from one implied by law.

EXPRESS TRUSTS, (defined). 56 Barb. (N. Y.) 635, 640; 38 How. (N. Y.) Pr. 352, 357.

EXPRESS WARRANTY.—One which is expressed in particular words. See **INSURANCE**; **WARRANTY**.

Expressa nocent, non expressa non nocent (D. 50, 17, 195): Things expressed hurt, things not expressed do not.

Expressa non prosunt quæ non expressa proderunt (4 Co. 73): The expression of things, of which, if unexpressed, one would have the benefit, is useless.

Expressio eorum quæ tacite insunt nihil operatur (Co. Litt. 210): The expression of those things which are tacitly implied has no effect.

Expressio unius est exclusio alterius: The express mention of one thing causes the exclusion of another. Thus, where in a mortgage of several properties the following general words were used—"together with all grates, boilers, &c., and other fixtures in and about the said two dwelling-houses and the brew-house thereunto belonging,"—it was ruled that the fixtures in the other mortgaged property did not pass to the mortgagee, although without these words they would have so done.

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS, (applied). 74 Ind. 223; 1 Civ. Pro. (N. Y.) 166; 6 Wheel. Am. C. L. 200.

Expressio unius personæ est exclusio alterius (Co. Litt. 210): The mention of one person is the exclusion of another.

EXPRESSLY WITHHELD, (in a statute). 2 Tenn. Ch. 677, 681.

Expressum facit cessare tacitum: What is expressed makes what is implied to cease. The word "demise" in a lease implies a covenant for quiet enjoyment, but if such covenant be inserted, then the maxim will apply. Implied contracts in law exist only where there is no express promise between the parties.

EXPRESSUM FACIT CESSARE TACITUM, (applied). 56 Ala. 11.

Expressum servitium regat vel declarat tacitum (Bacon): Let service expressed rule or declare what is silent.

EXPROMISSION.—A species of novation in the civil law; as a creditor's acceptance of a new debtor, who takes the place of the old debtor, who is discharged. Sand. Just. (5 edit.) 389.

EXPROMISSOR.—In the civil law, a surety; bail.

EXPROPRIATION.—Compulsorily depriving a person of a right of property belonging to him in return for a compensation. (St. Bonnet, Dict. s. v.; Holtz. Encycl. s. v.) The term has been introduced from its use in foreign countries to denote a compulsory purchase of land, &c., for the purposes of a railway, canal, or the like ("expropriation pour cause d'utilité publique"). *Id.*; Mayor, &c., of Montreal v. Drummond, 1 App. Cas. 384. See EMINENT DOMAIN.

EXPULSION.—See AMOTION.

EXPURGATION.—The act of purging or cleansing.

EXPURGATOR.—One who corrects by expurgating.

EXTEND—EXTENT.—

§ 1. To extend is to make a valuation of property by the oath of a jury, pursuant to a writ issued for that purpose. An extent is (1) the valuation thus made, which is embodied in an inquisition by the sheriff or other person executing the writ—the most usual instance occurs under a writ of elegit (*q. v.*); (2) a writ of execution, sometimes also called a writ of *extendi facias* ("that you cause to be extended"), directing an extent to be made. Writs of extent are now rare.

Extents to recover debts due to the crown are, in England, of two kinds—in chief and in aid.

§ 2. **Extent in chief.**—An extent in chief is an adverse proceeding by the crown for the recovery of a debt of record due to it. It issues in the first place against the crown's immediate debtor, and directs the sheriff to extend and seize his real and personal property, including debts due to him by other persons, to enforce payment of which an "extent in the second degree" may be issued against them, and so on. Tidd Pr. 1058.

§ 3. **An extent in aid** is one sued out at the instance and for the benefit of a debtor to the crown, for the recovery of a debt due to himself, the crown being merely the nominal plaintiff. To obtain an extent in aid, an extent *pro forma* is first sued out against the debtor to the crown, and on the sheriff returning that another person is indebted to him, the extent in aid issues against the sub-debtor. *Id.* 1063. See

Stat. 57 Geo. III. c. 117, restricting the issue & extents in aid.

§ 4. **An immediate extent** is one which issues in urgent cases without the usual preliminary of a *scire facias* (*q. v.*), on proof that the debt is in danger of being lost. (Tidd. Pr. 1046; Crown Suits Act, 1865, § 47.) If there is any question as to the existence of the debt, or as to whether the property seized under the writ belongs to the debtor, it is raised by pleading either to the *scire facias*, or to the return of the writ of extent. Mann. Exch. Pr. 97. See PLEA.

§ 5. **Extents on recognizances, &c.**—Extents, or writs in the nature of extents, were formerly issued, both in England and in some of the States, as writs of execution for private persons, either (1) to obtain satisfaction of a debt due on a recognizance, *e. g.* a statute merchant, or (2) to levy execution against lands descended to an heir under a judgment recovered against him on an obligation or bond entered into by his ancestor. Tidd. Pr. 1089. As to extents generally, see, also, Man. Exch. Pr. 3; 2 Wms. Saund. 220; West Ext. *passim*. See AMOVEAS MANUS; DIEM CLAUSIT EXTREMUM; LIBERATE; QUIETUS; VENDITIONI EXPONAS.

EXTEND, (defined). 1 Paine (U. S.) 377, 385.

— (in constitution of United States). 1 Wheat. (U. S.) 304, 331; 6 Halst. (N. J.) 370, 379; 4 Munf. (Va.) 1, 37.

EXTENDI FACIAS.—See EXTEND.

EXTENSION.—An indulgence by giving time to pay a debt, or perform an obligation.

EXTENSION, (of time for making an award). 9 Johns. (N. Y.) 115; 5 Paige (N. Y.) 575; 2 Barn. & C. 179; 3 *Id.* 144; 3 Dowl. & Ry. 446. — (of time of payment of a bond). 14 Pet. (U. S.) 201.

EXTENSION OF PATENT.—

Formerly, a patentee of a patent, upon proof that, without neglect or fault on his part, he had failed to obtain a reasonable remuneration for the time, ingenuity, and expenses bestowed upon the invention, and on the introduction thereof into use, might obtain an extension of such patent for the term of seven years longer; the term for which original patents were granted being then fourteen years. By act of congress of 1861, the term for which patents for inventions are at first issuable is enlarged to seventeen years, and extensions are disallowed. Patents for designs are issued for shorter terms, and may be extended.—*Abbott*.

EXTENT.—See EXTEND.

EXTENT, (as a process of execution). 3 Bl. Com. 419.

EXTENUATION.—Facts and circumstances which render a crime or tort less heinous than it would otherwise be. Extenuating circumstances go in mitigation of punishment in criminal cases, or of damages in civil cases.

EXTERNAL MEANS, (in an insurance policy). 22 Hun (N. Y.) 187, 189, 191.

EXTRATERRITORIALITY.—See EXTRATERRITORIALITY.

Extincto subjecto, tollitur adjunc-tum: The subject being extinguished, the incident ceases.

EXTINGUISHED, (when a debt is not). 3 Whart. (Pa.) 531, 536.

EXTINGUISHMENT.—A right or obligation is said to be extinguished when it ceases to exist. Thus, a debt is extinguished when it is paid, and an easement may be extinguished in several ways, as by release, abandonment, &c.; but the term "extinguishment" is applied especially to the case of an easement ceasing to exist from unity of possession—*i. e.* where the dominant and the servient tenements become united in the same person for an estate in fee-simple. Gale Easem. 581. Compare MERGER; SUSPENSION.

EXTINGUISHMENT, (of a judgment). 9 Wend. (N. Y.) 53.

—— (of a mortgage). 1 Hill (N. Y.) 107.

EXTINGUISHMENT OF COPYHOLD.—See COPYHOLD, § 3-5.

EXTIRPATION.—A species of waste. See ESTREPEMENT.

EXTIRPATIONE.—A judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, &c., maliciously overthrew any house or extirpated any trees upon it.—*Reg. Jud.* 13, 56.

EXTOCARE.—To grub up lands and reduce them to arable or meadow.—*Mon. Angl.* t. 2, p. 71.

EXTORSIVELY.—Oppressively.

EXTORT, (defined). 12 Cush. (Mass.) 84, 90.
—— (in an indictment). 6 Dowl. & Ry. 345.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum (10 Co. 102):

Extortion is a crime when, by color of office, any person extorts that which is not due, or more than is due, or before the time when it is due.

EXTORTION.—The misdemeanor committed by a public officer, who, under color of his office, wrongfully takes from any person any money or valuable thing. It is punishable by fine and imprisonment, and removal from office. 1 Russ. Cr. 303, 307; Steph. Cr. Dig. 71, 227. See DURESS; OPPRESSION; THREATS.

EXTORTION, (defined). 4 Conn. 471, 480; 6 Cow. (N. Y.) 661, 663; 2 Sneed (Tenn.) 159, 162; 2 Bish. Cr. L. § 390; 4 Bl. Com. 141; 4 Conn. Dig. 264.

—— (what is). 2 Mass. 523, 524; 7 Pick. (Mass.) 279, 281; 5 Paige (N. Y.) 311, 313.

—— (what is not). 10 Mass. 211; 15 Id. 525; 3 Brod. & B. 143.

—— (in a statute). 2 Bos. & P. 88.

—— (in an indictment). South. (N. J.) 324.

EXTRA.—A Latin word, meaning without; beyond; out of; used in the following words and phrases—

EXTRA COSTS.—Those charges which, in the English procedure, do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, &c., an affidavit of which must be made, to warrant the master in allowing them upon taxation of costs.

EXTRA-DOTAL PROPERTY.—A term applied in Louisiana to property which does not form a part of a woman's dowry.

EXTRA FEODUM.—Out of the fee.

EXTRA JUS.—Beyond the law.

Extra legem positus est civiliter mortuus (Co. Litt. 130): He who is placed out of the law is civilly dead.

EXTRA QUATUOR MARIA.—Beyond the four seas. Out of the realm of England. See FOUR SEAS.

EXTRA SERVICES, (in a statute). 21 Ind. 32.

Extra territorium jus dicenti non paretur impune (10 Co. 77): The sentence of one adjudicating beyond his territory cannot be obeyed with impunity.

EXTRA VIAM.—Out of the way.

EXTRA VIRES.—Beyond powers. See ULTRA VIRES.

EXTRACT.—A portion of a writing. Although extracts are not generally admitted in evidence, in cases where the

extracts are from public books, such as registers of births, marriages and burials properly kept, they are generally admitted if the whole of the matter relating to the issue has been extracted.

EXTRACTA CURIÆ.—The issues or profits of holding a court, arising from the customary fees, &c.—*Paroch. Antiq.* 572.

EXTRADITION.—

§ 1. Where a person, who has committed a crime in one nation or State, takes refuge in another, and is delivered up by the latter to the former for the purpose of being tried and punished, this delivery up or surrender is called "extradition."

§ 2. **Without a treaty.**—There has been much discussion among publicists as to whether, in the absence of a treaty, there is any obligation resting upon a nation to surrender fugitive criminals. While the question may not be regarded as authoritatively determined, as a general rule the existence of such an obligation is disregarded in practice among nations. In some countries where there are no treaty stipulations, fugitive criminals are surrendered on grounds of political expediency, but in England and the United States a surrender is never made unless expressly authorized by a treaty.

§ 3. **Under a treaty.**—In England, various acts have been passed, beginning with 6 and 7 Vict. cc. 75, 76, confirming or authorizing treaties of extradition between Great Britain and foreign countries. Such treaties contain reciprocal obligations on the part of each country to deliver up fugitive criminals. These acts have been repealed by the Extradition Act, 1870, and that act, as amended by the Extradition Act, 1873, contains the existing law on the subject. They provide for the application of the acts to foreign States with which arrangements have been made for the surrender of fugitive criminals, and define the offences for which they may be surrendered. They also provide that no criminal shall be surrendered for a political offence, or for the purpose of being tried for any other than the "extradition offence," *i. e.* the offence for which he is surrendered. In the United States treaties upon the subject of extradition have been made with many foreign countries of

recent years. Under these treaties, the duty of extradition is one which appertains exclusively to the federal government, and not to the State in which the fugitive may be found.

§ 4. **Between the States.**—By the United States constitution, Art. IV. § 2, it is provided that "a person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having the jurisdiction of the crime." For the correct practice on inter-state extradition, *see* 3 Crim. Law Mag. 787 *et seq.*

EXTRADITION, (how secured). 2 Brock. (U S.) 493; 12 Vt. 631; 1 Kent Com. 36; Story Conf. L. 520; 1 Op. Att.-Gen. 510; 3 *Id.* 661; 6 *Id.* 85.

EXTRAHURA.—A term used in the old English law denoting an estray (*q. v.*).

EXTRAJUDICIAL.—(1) Something which is done without judicial proceedings—as, when we speak of extrajudicial evidence (*see* EVIDENCE, § 1), or say that a distress is an extrajudicial remedy (*see* REMEDY), or that an oath is an extrajudicial oath (*see* PERJURY); (2) something which is said by a judge or judicial officer in a judicial proceeding, but beyond its scope. Thus, a dictum (*q. v.*) is an extrajudicial opinion.

Extraneus est subditus qui extra terram, i. e. potestatem regis natus est (7 Co. 16): A foreigner is a subject who is born out of the territory, *i. e.* government of the king.

EXTRAORDINARY.—The writs of *mandamus*, *quo warranto*, *habeas corpus*, and some others, are sometimes called "extraordinary remedies," in contradistinction to the ordinary remedy by action. As to extraordinary resolutions, *see* RESOLUTION. As to the extraordinary jurisdiction of the county courts, *see* COUNTY COURT, *ante* p. 307 *n.*

EXTRAORDINARY, (in a State constitution). 12 So. Car. 201.

EXTRAORDINARY CARE, (by carriers). 54 Ill. 19.

EXTRAPAROCHIAL.—LATIN: *extra* and *parochia*.

Outside of any parish. As to extraparochial highways, see 25 and 26 Vict. c. 61, § 32; as to extraparochial marriages, 23 and 24 Vict. c. 24; and as to the relief of extraparochial poor, see 5 and 6 Vict. c. 48, and 20 Vict. c. 19.

EXTRATERRITORIALITY.—The fiction of extraterritoriality is that by which the persons and residences of ambassadors and sovereigns, when abroad, are treated as being within their own territory, and outside of (*extra*) the territory where they actually are. The fiction is not now of much importance except with reference to the exemption of ambassadors, ministers, &c., from process, &c. See Westl. Pr. Int. Law 114. In the new edition of his book, Mr. Westlake calls it "extraterritoriality." Wheat. Int. L., § 95.

EXTRAVAGANTES.—See CANON LAW.

EXTREME CRUELTY, (in divorce act). 3 Mass. 321.

EXTREMIS.—See IN EXTREMIS.

EXTRINSIC.—See EVIDENCE, § 13.

EXTUMÆ.—Reliques in churches and tombs.

EXUERE PATRIAM.—To cast off one's nationality; to expatriate one's self.

Udny v. Udny, L. R. 1 Sc. & D. App. 441; Moorhouse v. Lord, 10 H. L. Cas. 272. See EXPATRIATION.

EXUPERARE.—To overcome; to apprehend or take.—*Leg. Edm.* c. ii.

EY, EA, or EE [from *ig*, an island, by melting the Saxon *g* into *y*, which is usually done; or the Saxon *ea*, water, rivers, &c., or French *ieag*, a field, by the same kind of melting.—*Gibson*.] Water, an island. See EIA.

EYE-WITNESS.—One who gives testimony to facts seen by himself.

EYDE.—(1) Aid; assistance; relief. (2) A subsidy.

EYRE, or EIRE (from the Latin *iter*, a journey,) signified the court of the justices itinerant or justices in eyre, who were regularly established, if not first appointed, by the parliament of Northampton, 1176, in the twenty-second year of Henry the Second, with a delegated power from the King's Great Court or *Aula Regia*, being looked upon as members thereof; and they made their circuit round the kingdom once in seven years, for the purpose of trying causes. They were afterwards directed by Magna Charta to be sent into every county once a year: but "as the power of the justices of assize, by many acts of parliament and other commissions increased, so these justices itinerant by little and little vanished away." Co. Litt. 293 a; 3 Steph. Com. 349. See ASSIZE, § 3.

F.

F.—A stigma put upon felons with a hot iron, on their being admitted to the benefit of clergy; abolished by 7 and 8 Geo. IV. c. 28, § 6. It was also branded upon fighters and brawlers, and persons guilty of falsity.—*Cowell*; *Jacob*. See, also, 2 Reeves Hist. Eng. Law 392.

F. O. B.—Free on board. A term frequently inserted, in England, in contracts for the sale of goods to be conveyed by ship, meaning that the cost of shipping will be paid by the buyer. When goods are so sold in London the buyer is considered as the shipper, and the goods when shipped are at his risk. (See *Cowas-Jee v. Thompson*, 5 Moo. P. C. 165; *Browne v. Hare*, 3 Hurlst. & N. 484, and 4 *Id.* 822; *Green v. Sickel*, 29 L. J. C. P. 213.)—*Wharton*.

FABRIC LANDS.—Lands given to provide for the rebuilding or repair of cathedrals and churches. Anciently, almost every person gave something by his will to be applied in repairing the fabric of the cathedral or parish church where he lived.—*Cowell*

FABRICARE.—To make. Used in old English law of a lawful coining, and also, of an unlawful making, or counterfeiting of coin. See 1 Salk. 342.

FABRICATE, (implies criminal intent). Wilberf. Stat. L. 254.

FABRICATED EVIDENCE.—False evidence, created by artifice with a view to deceive the court or jury. It may be altogether false, or be founded upon real facts so presented as to have a false appearance, and be calculated to produce false impressions and lead to false inferences.

FABULA.—In old European law, a contract or covenant. Also, in the laws of the Lombards and Visigoths, a nuptial contract; a will.—*Burrill*.

FAC SIMILE PROBATE.—In England, where the construction of a will may be affected by the appearance of the original paper, the court will order the probate to pass in *fac simile*, as it may possibly help to show the meaning of the testator. 1 Wms. Ex. (7 edit.) 331, 386, 566.

FACERE.—To do; to make. Thus, *facere default*, to make default; *facere duellum*, to make the duel, or make or do battle; *facere irem*, to make or pay a fine; *facere legem*, to make one's law; *facere sacramentum*, to make oath.

FACIAS.—That you cause. This is the emphatic word of the writs *faci facias*; *scire facias*; *venire facias*, and others, and is also used in other phrases, such as *facio, ut des*, I do (perform), that you may give; *facio, ut facias*, I do, that you may do; *do, ut facias*, I give, that you may do, &c.

FACILE.—One who is easily persuaded or imposed upon.—*Bell Dict.*

FACILITIES, (in a promissory note). 14 Mass. 322.

— (in a statute). 5 Q. B. D. 217.

Facinus quos inquinat æquat: Guilt makes equal those whom it stains.

FACIT.—See QUI FACIT, &c.

FACT.—

§ 1. The existence of every right and liability depends on two questions: first, whether there is a rule of law that in certain circumstances that right or liability shall arise; and secondly, whether those circumstances exist in the particular case under discussion. The former is called "a question of law," the latter "a question of fact." Thus, the right of C. B., the eldest son of A. B., to succeed to the land of his deceased father, depends, in England, first on the rule that (unless it is subject to a peculiar rule of descent, *e. g.* gavelkind, borough-English, or the like,) the land of an intestate descends to his eldest son; and secondly, on various questions of fact, such as whether the land is situated in a district subject to a peculiar rule of descent, whether A. B. died intestate as to that land, and whether C. B. is his eldest legitimate son, which again involves other questions of fact or law, or both. See *Per Jessel, M. R.*, in *Eaglesfield v. Marquis of Londonderry*, 4 Ch. D. 702; *Bolton v. London School Board*, 7 Ch. D. 766.

§ 2. **Foreign law.**—Questions of foreign law are questions of fact, requiring to be

proved by the evidence of persons professionally familiar with the system of law in which the question arises, or by the opinion of a court administering that law, given on a case submitted to it.

§ 3. **Pleading.**—The distinction between questions of fact and law is of importance in the law of pleading, because a party is bound to state the material facts upon which he relies (but not the evidence in support of them), while questions of law need not and must not be pleaded. (*Stokes v. Grant*, 4 C. P. D. 25.) Questions of law may be raised by demurrer, special case, or on motion for judgment (*see* those titles). When a question of law is raised at the trial of an action by a jury, it is decided by the judge, and the questions of fact are decided by the jury, the rule being that *ad quæstionem facti non respondent iudices; ad quæstionem juris non respondent juratores*. It not unfrequently happens that the pleadings raise a mixed question of law and fact (*e. g.* whether the defendant has libelled the plaintiff), and then either the judge directs the jury as to the law, leaving them to give their verdict for one party or the other on the facts as proved, subject to the direction so given, or the jury may bring in a special verdict finding the facts of the case, on which judgment is given by the court for one party or the other, according to the law applicable to the facts so found. *Best Ev.* 103; *Pow. Ev.* 10. See FURTHER CONSIDERATION; VERDICT.

§ 4. **Evidence.**—In the law of evidence, facts are sometimes divided into (1) facts in issue (also called principal facts, *facta probanda*), or those facts which are required to be proved, and (2) evidentiary facts (*facta probantia*), or those facts which are given in evidence with the view of proving the former. Where the fact given in evidence is the same as the fact in issue, the evidence is said to be direct; as where a witness on a trial for murder proves that he saw the prisoner kill the deceased. *Best Ev.* 9. See EVIDENCE, § 3.

§ 5. **Juridical—Non-juridical—Investitive—Divestitive—Translative.**—In jurisprudence, facts are variously divided into juridical and non-juridical, according as they do or do not give rise to or affect legal rights and duties, (3 Sav.

Syst. 3; 1 Ahrens Jur. Encyc. 345;) and, by the Benthamite school, into investitive facts (those by means of which a right comes into existence), divestitive facts (those by which it terminates), and trans-lative (those by means of which it passes from one person to another). 3 Benth. 189, and *see* the remarks of Austin and Holland on the subject; *also*, the various attempts (more or less unsuccessful) which have been made to define and classify facts, *e. g.* 6 Benth. 214; 1 Steph. Dig. Ev. 1; Steph. Indian Ev. Act 14; Holl. Jur. 71.

FACT, (defined). 10 How. (N. Y.) Pr. 161; 4 E. D. Smith (N. Y.) 34, 37.

FACTA ARMORUM.—Feats of arms, jousts, tournaments, &c.—*Cowell*.

Facta sunt potentiora verbis: Deeds are more powerful than words.

Facta tenent multa quæ fieri prohibentur (12 Co. 124): Deeds contain many things which are prohibited to be done.

FACTIO TESTAMENTI.—In the civil law, the power to make a will, including right and capacity; *also*, the power to receive a devise or legacy.

FACTO.—In fact; as where anything is actually done.—*Jacob*.

FACTOR.—

§ 1. A factor is an agent to whom goods are consigned or delivered for sale by or for a merchant or other person, and who, in return for his trouble, receives a compensation called factorage or commission. (Russ. Merc. Ag. 1; Chit. Cont. 189.) He has a lien for this remuneration on all the goods entrusted to him by his principal. (*See LIEN*.) Factor is also sometimes used (especially in the old books) to denote an agent for the purchase of goods; but at the present day this kind of agent seems to be more commonly called a "commission agent" or "commission merchant." *See AGENT*, § 5.

§ 2. The general rule (independently of statutes and the doctrine of market overt (*q. v.*)) seems to be that a factor is a general agent, and therefore if goods are entrusted to him as factor, and he sells them, such a sale will bind the principal, whatever his private instructions may have been, unless the purchaser knew of them at the time. Russ. Merc. Ag. 64. *See AGENT*, § 6.

§ 3. In Connecticut, Massachusetts and Vermont, the term "factor" is also used in the sense "garnishee" or "trustee." *See FACTORIZING PROCESS*.

FACTOR, (defined). Story Ag. § 33.

—— (what constitutes). 37 Ill. 99.

—— (who is not). 3 Cranch (U. S.) 454; 3 Watts (Pa.) 65, 178.

—— (liability of). 7 Mass. 36; 17 *Id.* 145; 1 Nott & M. (S. C.) 517; Paley Ag. 13.

—— (powers of). 4 Johns. (N. Y.) 103; 4 Rawle (Pa.) 195; 2 Wheel. Am. C. L. 138; 7 *Id.* 437.

—— (distinguished from "broker"). 50 Ala. 154, 156; 2 Barn. & Ald. 137; 2 Steph. Com. 78.

—— (goods sold by). 1 Pick. (Mass.) 343; 7 *Id.* 214.

—— (includes "scrivener"). 1 Atk. 141, 143.

—— (synonymous with "commission merchant"). 50 Ala. 154, 156.

FACTORAGE.—The wages, commission or allowance made to a factor by the merchant employing him.

FACTORIES.—The English Factory and Workshop Act, 1878, contains provisions for protecting the health and lives of persons employed in such establishments, for regulating the employment of children, young persons and women, and for the inspection of factories and workshops. *See FENCE*, § 3.

FACTORIZING PROCESS.—A process by which, in some of the New England States, the effects of a debtor are attached in the hands of a third person; otherwise termed "trustee process" and "garnishment."

FACTORS ACTS.—Various English statutes (Stats. 40 and 41 Vict. c. 39; 5 and 6 Vict. c. 39; 6 Geo. IV. c. 94; 4 Geo. IV. c. 83; Chit. Cont. 199; Sm. Merc. L. 133,) passed for the purpose of enabling a person in the possession of goods, or documents of title to goods, to validly sell or pledge the same, notwithstanding they may have been entrusted to him for a different purpose, or may have been already sold by him to some one else, or may be subject to a lien in favor of the person from whom he has bought them, or that his agency may have been revoked—the object being to protect persons having *bona fide* dealings with a factor or agent, without notice of the limitation on his power to deal with the goods. There are similar statutes in many of the States.

FACTORY.—(1) A place where a number of traders reside in a foreign country for the convenience of trade; (2) a building in which goods are manufactured; (3) in the Scotch law, a power conferred on a factor; a power of attorney.

FACTORY, (what includes). 8 Md. 479, 495.
 — (what is a). 11 Ohio St. 327.
 — (in a statute). L. R. 4 Q. B. 209; 5
Id. 19.
 — (in fire insurance policy). 45 Ill. 301.
FACTORY ESTATE, (in a will). 16 Conn. 1, 10.
FACTORY PRICES, (meaning of). 2 Mas. (U. S.) 89, 90.
 — (in a promissory note). 2 Conn. 69.
FACTS CONSTITUTING A CAUSE OF ACTION,
 (in code of civil procedure). 1 Dak. T. 403.

FACTUM.—A person's act or deed; anything done, stated or made certain; a wrongful or criminal act; the execution or making of a will; land granted to a farmer or tenant.

Factum a iudice quod ad ejus officium non spectat, non ratum est (10 Co. 76): An action of a judge which relates not to his office, is of no force.

Factum cuique suum, non adversario, nocere debet (Dig. 50, 17, 155): A party's own act should prejudice himself, not his adversary.

Factum infectum fieri nequit: A thing done cannot be undone.

Factum negantis nulla probatio sit (Cod. 4, 19, 23): There is no proof incumbent upon him who denies a fact.

Factum non dicitur quod non perseverat (5 Co. 96): That is not called a deed which does not continue operative.

FACTUM PROBANDUM—FACTUM PROBANS.—See **FACT**, § 4.

Factum unius alteri noceri non debet (Co. Litt. 152): The deed of one should not hurt another.

Facultas probationum non est angustanda (4 Inst. 279): The faculty of proofs is not to be narrowed.

FACULTY.—

§ 1. In English ecclesiastical law, faculty is a license to do some act, granted by the ordinary of the diocese or his deputy. Strictly speaking, a monument cannot be erected in a church or churchyard without a faculty, though it is not in practice often applied for. (Phillim. Ecc. L. 882. As to faculties for pulling down churches, see the Church Building Act, 1845, § 1; Stat. 32 and 33 Vict. c. 94, § 8.) A notary public is appointed by faculty. (*Id.* 1232). The archbishop of Canterbury has a court called the Court of Faculties, and an officer called the master of the faculties, who deals with applications for the admission and removal of notaries. (*Ib.*; Third Inst. 337.) The judge of the Provincial Courts of Canterbury and York is now *ex officio* master of the faculties. Public Worship Regulation Act, 1874, § 7.

§ 2. In the Scotch law, a power founded on the consent of him whence it is derived, as distinguished from a power founded on property.

FACULTY OF A COLLEGE.—

The body of instructors or professors of a college, as distinguished from the board of trustees. The faculty attend to the educational business, course of study and discipline of the college, while the trustees are invested with the title to the property and endowment of the institution, and superintend its financial concerns.

FACULTY OF ADVOCATES.—The college or society of advocates in Scotland.

FADERFIUM.—A marriage gift coming from the father or brother of the bride.

FÆDERFEOH.—The portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage; *i. e.* it reverted to her family in case she returned to them.—*Anc. Inst. Engl.*

FÆSTING-MEN.—See **FASTERMANS**.

FAGGOT.—A badge worn in Roman Catholic times by persons who had recanted and adjured what was then adjudged to be heresy, as an emblem of what they had merited.—*Cowell*.

FAGGOT VOTES.—A faggot vote is where a man is formally possessed of a right to vote for members of parliament, without possessing the substance which the vote should represent; as if he is enabled to buy a property, and at the same moment mortgage it to its full value for the mere sake of the vote; such a vote is called a faggot vote.—*Wharton*.

FAIDA.—Malice or deadly feud, arising by reason of a murder committed.

FAIL TO FULFILL HIS CONTRACT, (in an agreement). 17 Barb. (N. Y.) 260.

FAILING CIRCUMSTANCES, (in a statute). 24 Conn. 290, 310.

FAILING OF RECORD.—When an action is brought against a person who alleges in his plea matter of record in bar of the action, and avers to prove it by the record; but the plaintiff saith *nul tiel record*, viz., denies there is any such record; upon which the defendant has a day given him by the court to bring it in; if he fail to do it, then he is said to fail of his record, and the plaintiff is entitled to sign judgment.—*Termes de la Ley*.

FAILING TO COMPLY, (not synonymous with "refusing to comply"). 9 Wheat. (U. S.) 325, 344.

FAILLITE.—In the French law, bankruptcy; failure; the situation of a trader who is unable to pay his debts.

FAILURE, (of a bank). 13 So. Car. 220.

FAILURE OF ISSUE.—The absence or want of issue capable of taking an estate or interest limited over by an executory devise.

FAILURE OF ISSUE, (in a will). 18 L. J. Ch. n. s. 465; 1 Russ. 382, 404; 8 Com. Dig. 428. — (when means "indefinite failure"). 5 Paige (N. Y.) 514; 11 Wend. (N. Y.) 259.

FAILURE OF RECORD.—See **FAILING OF RECORD**.

FAINT.—See **ACTION**, § 17.

FAINT PLEADER.—A fraudulent, false or collusive manner of pleading to the deception of a third person. 3 Edw. I. c. 19.

FAIR.—

§ 1. In English law, a greater species of market, recurring at more distant intervals. No fair can be holden without grant from the crown, or a prescription which supposes such grant. Before a patent is granted, it is usual to have a writ of *ad quod dampnum* executed and returned, that it may not be issued to the prejudice of another fair or market already existing. The grant usually contains a clause that it shall not be to the hurt of another fair or market; but this clause, if omitted, will be implied, for if the franchise occasion damage either to the crown or a subject, in any respect, it will be revoked; and a person whose ancient title is prejudiced, is entitled to have a *scire facias* in the queen's name to repeal the letters-patent. If the queen grant power to hold a fair or market in a particular place, the lieges can resort to no other, even though it be inconvenient. But if no place be appointed, the grantees may keep the fair or market where they please, or where they can most conveniently.

§ 2. In American law, fairs, in the sense of the English law, are comparatively unknown, but in Alabama and North Carolina they seem to have been recognized and regulated by statute. In the other States the word "fair" has no technical legal meaning, fairs being mere voluntary enterprises governed by the ordinary laws applicable to partnerships, sales, &c.

FAIR OR MARKET, (right to hold). 4 Bac. Abr. 154.

FAIR ABRIDGMENT, (of a book). 4 McLean (U. S.) 306; 2 Story (U. S.) 100, 106.

FAIR AND REASONABLE SUPPOSITION OF RIGHT, (in statute punishing damage to property). L. R. 7 Q. B. 353.

FAIR AVERAGE CROP, (in a contract). 15 Ark. 444.

FAIR LEGAL TRIAL, (in condition of bond). 1 Blackf. (Ind.) 537 (2 edit).

FAIR-PLAY MEN.—The name of an

irregular local tribunal which existed in Pennsylvania about the year 1769.—*Bouvier*.

FAIR PLEADER.—See **BEAUPLEADER**.

FAIRLY, (defined). 41 Ala. 26, 40.

— (not synonymous with "truly"). 2 C. E. Gr. (N. J.) 234, 239.

FAIT.—A deed or writing; a fact; anything done.

FAIT ENROLLE.—A deed enrolled, as a bargain and sale of freeholds. 1 Keb. 568.

FAITH, ARTICLES OF.—See **ARTICLES OF RELIGION**.

FAITH AND CREDIT, (in constitution of United States). 17 Mass. 513, 545.

FAITHFUL, (in a bond). 9 Wheat. (U. S.) 680; 12 *Id.* 64; 1 Paine (U. S.) 661; 12 Pick. (Mass.) 303.

FAITHFUL PERFORMANCE, (in a bond). 2 Halst. (N. J.) 32; 2 Vr. (N. J.) 342.

— (in a statute). 4 Wend. (N. Y.) 414.

FAITHFULLY, (in a bond). 1 T. R. 287.

— (includes "well," "truly," "firmly," and "impartially"). 2 Vr. (N. J.) 342.

FAITHFULLY DISCHARGE, (in a bond). 8 Mass. 275.

FAITHFULLY EXECUTE, (in a bond). 3 Wend. (N. Y.) 53.

FAITHFULLY PERFORM, (in a bond). 10 Johns. (N. Y.) 271; 11 *Id.* 182.

FAITHFULLY SERVE HIS MASTER, (in an indenture of apprenticeship). 2 Mass. 226, 228.

FAITOURS.—Evil-doers; idle livers; vagabonds.—*Termes de la Ley*.

FALANG.—A jacket or close coat.—*Blount*.

FALCARE.—To cut or mow down grass laid in for hay.

FALCATURA.—One day's mowing of grass, a customary service to the lord by his inferior tenants. *Falcata*, the fresh grass mowed and laid in swathes. *Falcator*, the tenant-mower.—*Kenn. Gloss.*

FALCIDIA.—In the Spanish law, the fourth portion of an inheritance, which legally belongs to the heir, and for the protection of which he has the right to reduce the legacies to three fourth-parts of the succession, in order to protect his interest.—*Bouvier*.

FALCIDIAN LAW.—In the Roman law, a statute or law restricting the right of disposing of property by will, enacted by the people during the reign of Augustus, on the proposition of Falcidius, who was a tribune, in the year of Rome 714.—*Bouvier*.

FALCIDIAN PORTION.—That portion of a testator's estate which, by the Falcidian law, was required to be left to the heir, amounting to at least one-fourth.

FALD, or FALDA.—A sheep-fold.—*Cowell.*

FALDÆ CURSUS.—A sheep-walk. 2 Vent. 139.

FALDAGE is the same as foldage and free-fold (q. r.) Elt. Com. 45, 46; Co. Litt. 6 a, n. (1).

FALDATA.—A flock or fold of sheep.—*Cowell.*

FALD-FEE.—A composition paid anciently by tenants for the privilege of faldage.—*Cowell.*

FALDISDORY.—The bishop's seat or throne within the chancel.

FALDSOCA.—The privilege of faldage or foldage (q. r.)

FALDSTOOL, or FOLDSTOOL.—A place at the south side of the altar, at which the sovereign kneels at his coronation.

FALDWORTH.—A person of age, that he may be reckoned of some decennary.—*Du Fresne.*

FALESIA.—In old English law, a hill, or down by the sea-side.

FALK-LAND.—*See FOLCLAND.*

FALL.—In the Scotch law, to lose or forfeit.

FALL OF LAND.—A quantity of land six ells square, superficial measure.

FALL TERM, (in caption of indictment). 2 Hawks (N. C.) 461.

FALL, THIS, (in an agreement). 3 W. Va. 445.

FALLEN, (in a statute). Cruise Dig. tit. 31, ch. 2, § 13.

FALLEN BUILDING, (what is not). 51 Cal. 101; 21 Am. Rep. 703.

FALLO.—The final judgment or decree of a Spanish court in a civil action.

FALLOW-LAND.—Land ploughed, but not sown, and left uncultivated for a time, after successive crops.

FALLUM.—An unexplained term for some particular kind of land.—*Cowell.*

FALMOTUM.—*See FOLCEMOTE.*

Falsa causa non nocet: A false motive will not vitiate. If the motive assigned for making any particular bequest or devise to any particular legatee or devisee is wholly erroneous and mistaken, that does not in general affect the bequest or devise, which accordingly remains good. But if the legatee or devisee has fraudulently conducted to the mistake or error, or, if the mistake or error was sufficiently singular as to suggest non-testamentary capacity, the whole

legacy or will will be void for the fraud or insanity.

FALSA DEMONSTRATIO.—False description or designation of a person or thing in a written instrument.

Falsa demonstratio non nocet (6 T. R. 766): False description does not vitiate. This maxim (in its full expression *Falsa demonstratio non nocet cum de corpore constat*) means, that a mere inaccuracy of description will not diminish or enlarge the subject-matter of a devise or bequest, when that subject-matter (*corpus*) is otherwise well ascertained. But, of course, the maxim in its very words implies that it has no application to cases in which the *corpus* is not so ascertained, and in which the *corpus* must needs, therefore, be gathered either wholly or partly from the alleged inaccurate words of description; in this latter case, these alleged inaccurate words must be taken to be accurate, if there is any subject-matter to which they exactly fit, upon the maxim *Non accipi debent verba in falsam demonstrationem quae competunt in veram limitationem*.

FALSA DEMONSTRATIO NON NOCET, (applied). 13 Vr. (N. J.) 587; 83 N. C. 123.

Falsa demonstratione legatum non perimit (Inst. 2, 20, 30): A false description does not prejudice a legacy.

Falsa orthographia, sive falsa grammatica, non vitiat concessionem (9 Co. 48): Bad spelling or bad grammar does not vitiate a grant. Sir John Doderidge says: "Though the lawyers' Latin cannot defend itself *in bello grammaticali*, will grammarians utterly condemn the use thereof? Methinks they should not, but might give lawyers leave to speak in their own dialect." Noy Max. (Bythw. Ed.) 266.

FALSARE.—In old English law, to counterfeit. *Falsarius*, a counterfeiter.

FALSE, (distinguished from "untrue"). 2 Barn. & C. 257, 263.

FALSE ACCOUNT, (in a statute). 51 N. H. 192, 207.

FALSE ACTION.—*See ACTION*, § 17.

FALSE BILL, (what is a). 1 Ohio St. 185, 187.

FALSE CHARACTER.—Personating the master or mistress of a servant, or any representative of such master or mistress, and giving a false character to the servant, is an offence punishable in England with a fine of £20. Stat. 32 Geo. III. c. 56.

FALSE CLAIM.—In the forest law, a claim by a man for more than his due. Manw. c. 25.

FALSE FACT.—*See FABRICATED EVIDENCE.*

FALSE IMPRISONMENT.—

A total restraint for some period, however short, put upon the liberty of a person without sufficient legal authority. Thus, if a constable arrests a man for felony without warrant and without reasonable cause for suspecting him, he is liable to an action of damages for false imprisonment. Underh. Torts 105; Broom Com. L. 722. See TORT.

FALSE IMPRISONMENT, (defined). 1 Chit. Gen. Pr. 48.

— (what is). Baldw. (U. S.) 571, 600; 9 N. H. 491.

— (actual force not necessary to constitute). 7 Humph. (Tenn.) 43.

— (when action lies). 3 Wend. (N. Y.) 350; 5 Wheel. Am. C. L. 383.

FALSE JUDGMENT.—See WRIT OF FALSE JUDGMENT.

FALSE LATIN.—When law proceedings were written in Latin, if a word was significant though not good Latin, yet an indictment, declaration, or fine was not made void by it; but if the word was not Latin, nor allowed by the law, and it was in a material point, it made the whole vicious. 5 Co. 121; 2 Nels. 830.

FALSE LIGHTS AND SIGNALS.—Exhibiting false lights or signals, with intent to bring any ship into danger, is felony, punishable, in England, with penal servitude for life (maximum). (Stat. 24 and 25 Vict. c. 97, § 47.) And in the United States by imprisonment. U. S. Rev. Stat. § 5358.

FALSE NEWS.—Spreading false news, whereby discord may grow between the queen of England and her people, or the great men of the realm, or which may produce other mischiefs, still seems to be a misdemeanor under Stat. 3 Edw. I. c. 34. Steph. Cr. Dig. § 95.

FALSE OATH.—See PERJURY.

FALSE OATH, (charge of taking, a ground for action of slander). 2 Johns. (N. Y.) 10.

FALSE PERSONATION.—See PERSONATION.

FALSE PLEA.—See SHAM PLEA.

FALSE PLEA, (what is not). 1 Wend. (N. Y.) 30.

FALSE PRETENCE.—In criminal law, a false representation that some fact exists or has existed. Obtaining goods, money, &c., by false pretences with intent

to defraud, is a misdemeanor. Obtaining credit by false pretences is also a misdemeanor.

FALSE PRETENCE, (what is). 4 City Hall Rec. (N. Y.) 65.

— (what is not). 4 City Hall Rec. (N. Y.) 156.

— (in a statute). 108 Mass. 309, 312; 12 Johns. (N. Y.) 292.

— (does not necessarily involve the use of a visible token). 3 Dutch. (N. J.) 323.

FALSE PRETENCES, (defined). 14 Wend. (N. Y.) 571.

— (in an indictment). 2 T. R. 581; 3 Id. 98.

— (indictment for). 11 Ind. 154; 31 Id. 192; 107 Mass. 486; 4 Pick. (Mass.) 177; 2 East 30.

— (obtaining indorsement by). 9 Wend. (N. Y.) 182.

— (obtaining money under). 1 City Hall Rec. (N. Y.) 116.

— (obtaining property by). 1 Park. (N. Y.) Cr. 224.

FALSE PROPHECIES, with intent to disturb the peace, are unlawful, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. They are punishable as misdemeanors. By 5 Eliz. c. 15, the penalty for the first offence is a fine of £10, with one year's imprisonment; for the second, forfeiture of all goods and chattels, and imprisonment for life.—*Wharton*.

FALSE REPRESENTATION.—See FRAUD.

FALSE REPRESENTATION, (what constitutes). 7 Wend. (N. Y.) 22.

FALSE RETURN.—An action for damages lies against a person who makes a false return to a writ, whether a sheriff acting under an ordinary writ of execution, or a person to whom a special writ, such as a *mandamus*, is directed. A false return may consist in a *suppressio veri*, as well as an *allegatio falsi*. *Howden v. Standish*, 6 Com. B. 504; *Rex v. Mayor of Lyme Regis*, 1 Doug. 149.

FALSE SWEARING.—The misdemeanor committed in English law, by a person who swears falsely before any person authorized to administer an oath upon a matter of public concern, under such circumstances that the false swearing would have amounted to perjury if committed in a judicial proceeding; as where a person makes a false affidavit under the Bills of Sale Acts. Steph. Cr. Dig. 84.

FALSE SWEARING, (defined). 6 Ind. 137.

— (charge of, when actionable). 20 Johns. (N. Y.) 344; 11 Wend. (N. Y.) 38; 12 Id. 500

FALSE SWEARING, (in insurance policy). 6 Ind. 137; 2 Hall (N. Y.) 490.
 ——— (indictment for). 9 Pet. (U. S.) 238.

FALSE TOKEN.—In criminal law, a false document or sign of the existence of a fact, used with intent to defraud. *See* FALSE PRETENCE.

FALSE TOKEN, (defined). 13 Wend. (N. Y.) 319.
 ——— (what is). 14 Wend. (N. Y.) 570.
 ——— (fraud effected by means of). 9 Wend. (N. Y.) 182.
 ——— (in a statute). 3 T. R. 98, 104.

FALSE VERDICT.—An untrue verdict. Formerly, if a jury gave a false verdict, the party injured by it might sue out and prosecute a writ of attain against them, either at common law or on the Stat. 11 Hen. VII. c. 24, at his election, for the purpose of reversing the judgment and punishing the jury for their verdict; but not where the jury erred merely in point of law, if they found according to the judge's direction. The practice of setting aside verdicts and granting new trials, however, so superseded the use of attainments, that there is no instance of one to be found in the books of reports later than in the time of Elizabeth, and it was altogether abolished by 6 Geo. IV. c. 50, § 60.—*Wharton*.

FALSE WEIGHTS AND MEASURES.—By 5 Geo. IV. 74; 6 Geo. IV. c. 12, and 5 and 6 Will. IV. c. 63 (superseding the former acts on the subject), standards are fixed for length, weight and capacity, and it is provided that all contracts for sale by weight or measure, where no special agreement is made to the contrary, shall be taken to refer to the standards so established. The 55 Geo. III. c. 34, provides for the punishment of offenders using false and deficient measures. The 37 Geo. III. c. 153, gives magistrates in petty sessions summary jurisdiction herein.

FALSE WRITING, (in a statute). 13 Wend. (N. Y.) 311.

FALSEDAD.—In Spanish law, falsity; an alteration of the truth; deception; fraud.

FALSEHOOD.—In the Scotch law, a fraudulent imitation or suppression of truth, to the prejudice of another.—*Bell Dict.*

FALSEHOOD, (defined). 51 N. H. 192, 207.
FALSELY, (in a declaration). Cro. Eliz. 201.
 ——— (in a statute). 8 Blackf. (Ind.) 526.
 ——— (in an indictment). 4 Barn. & C. 329; 6 Com. Dig. 53; Stark. Cr. Pl. 86.
 ——— (in statute punishing counterfeiting). 5 McLean (U. S.) 208, 211.
 ——— (when equivalent to "maliciously"). 1 Chit. Pl. 421.

FALSELY AND CORRUPTLY, (in an indictment for perjury). Cro. Eliz. 147.

FALSELY AND MALICIOUSLY, (in a declaration). 1 Binn. (Pa.) 172; 2 Munf. (Va.) 10; 2 Chit. 304; 1 Dowl. & Ry. 97; 2 Wils. 300, 301.

FALSELY AND MALICIOUSLY, (in an indictment for perjury). 7 Dowl. & Ry. 665.

FALSELY AND MALICIOUSLY SUING OUT A COMMISSION OF BANKRUPTCY, (action for). 2 Wils. 146.

FALSELY AND VOLUNTARILY, (in an indictment for perjury). 3 Yeates (Pa.) 407, 413.

FALSELY PRETENDED, (in an indictment). 2 Mau. & Sel. 379.

FALSI CRIMEN.—Fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed—(1) By words, as when a witness swears falsely; (2) by writing, as when a person antedates a contract; (3) by deed, as selling by false weights and measures.—*Wharton*. *See* CRIMEN FALSI.

FALSIFICATION.—*See* FALSIFY, § 1.

FALSIFICATION, (of accounts). 2 Barb. (N. Y.) 586; 2 Edw. (N. Y.) 1, 23.

FALSIFY.—

§ 1. Where an account is being investigated in a court of equity or probate jurisdiction, and the party at whose instance it is taken shows that an item of payment or discharge contained in it is false or erroneous, he is said to falsify it. If an account has been stated or settled between the parties, and one of them afterwards impugns it, the court may either re-open the whole account, or merely give liberty to "surcharge and falsify." In the former case the accounting party has the *onus* of showing that the account is full and correct, while in the latter case the *onus* lies on the party impugning the account, and if he objects to any omissions or errors in the account, he must allege them specifically and substantiate them by evidence. The grounds on which the court allows a settled account to be re-opened are: fraud in the settlement of the account, want of good faith on the part of a person in a fiduciary relation, or the like. Where, however, it is merely a question of mistake and not of fraud, then liberty to surcharge and falsify will alone be given. Dan. Ch. Pr. 577. *See* ACCOUNT, § 4; SURCHARGE.

§ 2. In the old books, falsify is used in the sense of defeating or avoiding (Litt. §§ 149, 688), but this sense is obsolete.

FALSIFYING A RECORD.—A high offence against public justice, punishable in England by 24 and 25 Vict. c.

98, §§ 27, 28, and by statute in the several States and District of Columbia.

FALSIFYING A RECORD, (defined). 4 Steph. Com. 309.

FALSIFYING JUDGMENTS.—Reversing them.

FALSIFYING JUDGMENTS, (defined). 4 Steph. Com. 553.

FALSING.—In the Scotch law, (1) making or proving false; (2) forgery.

FALSING OF DOOMS.—In the Scotch law, proving the falsity or injustice of a doom or sentence, on appeal, in a higher court; also the taking an appeal.—*Bell Dict.*

FALSO RETORNO BREVIUM.—A writ that lay against a sheriff, who had execution of process for a false return.—*Reg. Jud.* 43.

FALSONARIUS.—A forger; a counterfeiter. *Hov.* 424.

FALSUM.—In the civil law, the same as *falsehood* (*q. v.*) in the Scotch law.

FALSUS.—False; fraudulent; erroneous. In the first two senses applied to persons as respects their acts and conduct, as well as to things; and in the third sense also applied to persons on the question of personal identity.

Falsus in uno, falsus in omnibus: False in one thing, false in all. This maxim is frequently applied to the testimony of a witness, which, if shown to be wilfully false in regard to one matter, may be wholly rejected as unworthy of credit. The wilful falsity is essential to make a case for the application of this rule. The principle is also invoked to discredit documentary evidence, affidavits, depositions, &c. It is also applied, in civil cases, to sustain charges of deceit or misconduct involving the element of deception, and has been cited as the foundation of the rule that the testimony of a person once convicted of perjury is inadmissible, now generally abolished.—*Abbott*.

FALSUS IN UNO, FALSUS IN OMNIBUS, (applied). 44 N. Y. 172.

FAMA.—Fame; character; report or common opinion.

Fama, fides, et oculus non patiuntur ludum (3 Buls. 226): Fame, faith, and eye-sight do not suffer a cheat.

Fama, quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maledicos, sed providas et fide dignas personas, non semel sed sæpius, quia clamor minuit et defamatio manifestat (2 Inst. 52): Report, which induces suspicion, ought to arise from good and grave men, not indeed from malevolent and malicious men, but from cautious and credible persons, not only once, but frequently; for clamor diminishes, and defamation manifests.

FAMACIDE.—A killer of reputation; a slanderer.

FAMILIA.—In the Roman law, a family; all the servants belonging to a particular master; also a portion of land sufficient to maintain one family. In the widest sense among the Romans, it signified the totality of that which belongs to a Roman citizen who is *sui juris*, and therefore a *paterfamilias*. But the word "*familia*" is sometimes limited to signify persons, *i. e.* all those who are in the power of a *paterfamilias*, such as his sons (*filiifamilias*), daughters, grandchildren, and slaves.—*Smith Dict. Antiq.* It has a similar signification in the Spanish and old English law.

FAMILIÆ EMPTOR.—In the Roman law, an intermediate person who purchased the aggregate inheritance when sold *per aes et libram*, in the progress of making a will under the twelve tables. This purchaser was merely a man of straw, transmitting the inheritance to the *haeres* proper.—*Brown*.

FAMILIÆ ERCISCUNDÆ.—In Roman law, an action for the partition of the aggregate succession of a *familia*, where that devolved upon co-hæredes; it was also applicable to enforce a contribution towards the necessary expenses incurred on the *familia*.

FAMILIARES REGIS.—Persons of the king's household. The ancient title of the six clerks of chancery in England. 2 Reeves Hist. Eng. Law. 249, 251.

FAMILIES, (in a will). 11 Wheat. (U. S.) 375; L. R. 14 Eq. 160; 8 Ves. 604; 8 Com. Dig. 429.

FAMILY.—Father, mother and children. All the individuals who live under the authority of another, including the servants of the family. All the relations who descend from a common ancestor or who spring from a common root. (La. Code, Art. 3522, No. 16; 9 Ves. 323).—*Bouvier*.

FAMILY, (defined). 31 Conn. 326, 329; 79 Ill. 584; 50 Mo. 577, 581; 72 Id. 492; 28 Ohio St. 483; 4 Com. Dig. 154.
— (what constitutes). 14 How. (N. Y.) Pr. 519.

FAMILY, (who is included in). 13 Mass. 520, 523; 17 Mo. 424, 428; 2 Desaus. (S. C.) 524, 531.

—— (who is not included). 53 Ill. 263.

—— (when means "children" only). 3 Sandf. (N. Y.) 555.

—— (in a policy of insurance). 125 Mass. 274.

—— (in a statute). 1 Me. 329; 50 Mo. 577, 581; Penn. (N. J.) 482, 487; 6 Daly (N. Y.) 224; 4 T. R. 797, 800; 16 East 118.

—— (in a trust deed). 11 Paige (N. Y.) 159.

—— (in a will). 8 Allen (Mass.) 339, 342; 128 Mass. 334; 2 Disn. (Ohio) 564; 7 Heisk. (Tenn.) 234; 1 Bro. Ch. 142; 3 East 172; 15 Eng. L. & Eq. 202; L. R. 6 Ch. 597; 3 Ch. D. 672; 8 Id. 540; L. R. 9 Eq. 622; 5 Mau. & Sel. 126, 130; 5 Ves. 159, 167; 9 Id. 319, 323; 13 Id. 38, 46.

—— (in an order of a justice). 1 Com. 86.

—— (in an order to remove a pauper). 1 Ld. Raym. 395.

—— (in State constitution). 3 So. Car. 226; 31 Tex. 677; 48 Id. 471.

—— (in dower act). 53 Ill. 263.

—— (in exemption law). 21 Ill. 40; 48 Tex. 517.

—— (in notice by town overseers). 16 Mass. 102.

FAMILY ARRANGEMENT.—

An agreement made in England between a father and his son, or children, or between brothers, to dispose of property in a manner different from that which would take place in the absence of such agreement. When entered into for the sake of preserving peace in the family, (say, to avoid some question about the legitimacy of the reputed eldest son,) it will be upheld, when there has been *bona fides* and honest intention on each side and also the fullest disclosure; but without the fullest disclosure such an arrangement is voidable on the ground of fraud. *Gordon v. Gordon*, 3 Swans. 463.

FAMILY BIBLE.—A Bible containing a written record of the births, deaths and marriages of the persons composing a family. These entries, if original, are admissible in evidence in proof of the facts therein stated.

FAMILY HOMESTEAD, (defined). 51 N. H. 253.

FAMILY LIBRARY, (what includes). 3 Abb. (N. Y.) Pr. 466.

FAMILY MEETING, or COUNCIL.—A meeting convoked by order of a judge, in Louisiana, of the relatives, or (in case he has no relatives) of the friends of a minor to confer as to the guardianship and administration of the property of such minor. The persons present are sworn and presided over by a justice of

the peace or notary, and their deliberations are of a *quasi judicial* character.

FAMILY, MEMBER OF, (who is). 19 Wend. (N. Y.) 475.

FAMILY PHYSICIAN, (defined). 17 Minn. 497, 519. 58 Mo. 421, 424.

—— (in insurance policy). 17 Minn. 497; 10 Am. Rep. 166.

FAMILY, TO MY, (in a will). 17 Ves. 255; 19 Id. 299; 8 Com. Dig. 429.

FAMOSUS LIBELLUS.—An infamous libel.

FANATICS.—Persons pretending to be inspired, and being a general name for Quakers, Anabaptists, and all other sectaries, and factious dissenters from the Church of England. (Stat. 13 Car. II. c. 6.)—*Jacob*.

FANATIO.—See FENCE-MONTH.

FARANDMAN.—In the Scotch law, a traveller or merchant stranger.—*Skene Verb. Sig.*

FARDEL OF LAND.—The fourth part of a yard-land. Noy says an eighth only, because, according to him, two fardels make a nook, and four nooks a yard-land. (Noy; Compl. Lawy. 57.)—*Wharton*.

FARDING-DEAL, or FARUNDEL OF LAND.—The fourth part of an acre of land.—*Spel. Gloss.*

FARE.—A voyage or passage by water; also, the money paid for a passage either by land or by water.—*Cowell*. The latter is the modern signification.

FARE, (in act concerning railroads). 26 N. Y. 523.

FARINAGIUM.—A mill.—*l. c. Gloss.* A toll of meal or flour.—*Jacob*.

FARLEU—FARLEY.—Money paid by tenants in lieu of a heriot. It is then applied to the best chattel, as distinguished from heriot the best beast.—*Cowell*.

FARLINGARII.—Whoremongers and adulterers.

FARM.—

§ 1. In English law.—This is the old Saxon *feorme*, and signifies a provision. Anciently, rents were reserved in provisions, such as corn, poultry, and the like, a money equivalent not having been finally introduced until the time of Henry I. Originally, therefore, farm meant rent, and by a natural transposition it now means the land out of which the rent issues, and even the lease. It is a collective word, consisting of many things, as a messuage, land, meadow, pasture, wood, common, &c. In Lancashire a farm was called "ferm-holt;" in the north, a "tack," and in Essex, a "wike."

§ 2. In American law, "farm," as a noun, means a tract of land devoted to purposes of agriculture, cattle raising, &c., and as a verb, its meaning is to till or cultivate lands as a business. The former English significations have never been in use in the United States.

FARM, (defined). 2 Bl. Com. 317; 1 Chit. Gen. Pr. 160.

— (in a deed). 4 Day (Conn.) 265; 33 Me. 204; 1 Shep. Touch. 93.

— (in a mortgage). 124 Mass. 69, 71.

— (in a will). Penn. (N. J.) 598, 601; 10 Cush. (Mass.) 155; 5 Pick. (Mass.) 512; 4 Wheel. Am. C. L. 267, 383; 2 W. Bl. 975, 976 n.; 1 Mau. & Sel. 299; 1 Moo. 80; 3 Wils. 141, 143; 1 Chit. Gen. Pr. 101.

— (synonymous with "lot" in a statute). 4 Wend. (N. Y.) 429.

FARM, ALL MY, (in a will). 3 Cranch (U. S.) 97, 131; Reeve Dom. Rel. 489.

FARM CROSSING (in general railroad act). 12 Barb. (N. Y.) 227.

FARM, FROM ONE PART OF TO THE OTHER, (in a statute). 2 Binn. (Pa.) 235; 4 Yeates (Pa.) 416.

FARM LET.—Operative words in a lease, which strictly mean to let upon payment of a certain rent in farm, *i. e.* in agricultural produce. These words are still retained in leases, though not essential to a valid demise, and having no longer any definite meaning or force.

FARM, MY HOMESTEAD, (in a deed). 14 Me. 387.

FARM OUT.—To let for a term at a stated rental. Among the Romans the collection of revenue was farmed out, and in England taxes and tolls sometimes are.

FARM OUT, (defined). 72 N. C. 634, 637.

FARMER.—One who cultivates his own or hired land; also, in England, the lessee of taxes or tolls.

FARMING STOCK, (in a will). 17 Ch. D. 700.

FARMING UTENSILS, (in a statute). 20 Kan. 555.

FARMS, (in a will). 9 East 448, 461.

FARO.—An unlawful game played with cards and checks representing money. The proprietor of the establishment where it is played is called the "banker," and all the players play against him.

FARRAGO LIBELLI.—An ill-composed book containing a collection of miscellaneous subjects not properly associated nor scientifically arranged.—*Wharton*.

FARRIER.—A shoer of horses. As to the duties of common farriers, see 1 Ld. Raym. 654, and Oliph. Hors. (3 edit.) 233 *et seq.*

FARTHING.—The fourth part of an English penny.

FARTHING OF GOLD.—An ancient coin, containing in value the fourth part of a noble. 9 Hen. V. c. 7.

FARTHING, or FARTHINGDELL OF LAND.—See FARDING-DEAL.

FARUNDEL OF LAND.—See FARDING-DEAL.

FARVAND.—Passage by water. See 18 Com. B. 880.

FAS.—Right; justice; divine law

FASIUS.—A faggot of wood.

FAST, (as applied to the running of a train) 76 Ill. 340.

FAST-DAY.—A day of mortification by religious abstinence. As to such a day being reckoned in proceedings, see 1 Chit. Arch. Pr. (12 edit.) 160 *et seq.*

FAST ESTATE.—Real estate. See 6 Johns. (N. Y.) 185; 9 N. Y. 502.

FAST FISH, (what are). 2 Car. & P. 595.

FASTERMANS, or FASTING-MEN.—Men in repute and substance; pledges, sureties, or bondsmen, who, according to the Saxon polity, were *fast* bound to answer for each other's peaceable behavior.—*Encycl. Lond.*

FASTI.—See DIES FASTI.

Fatetur facinus qui judicium fugit (3 Inst. 14): He who flees judgment confesses his guilt.

FATHER AND CHILD.—A father (*i. e.* he by whom a child is begotten) is the guardian of his child, and may by will or deed appoint a guardian to act for himself after his death; and the father or the guardian so appointed directs the education of the child; the father is bound (if able) to provide him with necessaries. He may use reasonable (but not extreme) chastisement for the correction of the child. For some purposes, the child (when of a certain age) is in the position of a servant to his father, who may therefore have an action for loss of services in the case of the child's seduction. The marriage of a

child under age is his or her emancipation from the father's power. *See* PARENT AND CHILD.

FATHER AND MOTHER, (in a statute). 11 East 1.

FATHER-IN-LAW.—The father of one's wife or husband.

FATHOM.—A nautical measure of six feet in length.

FATUA MULIER.—A whore.—*Du Fresne*.

FATUITAS.—In old English law, idiocy.—*Reg. Orig.* 266.

FATUM.—Fate. A civil law term for an event impossible to anticipate or prevent.—*See* DAMNUM FATALE.

FATUOUS PERSONS.—Idiots.—*Jacob*.

Fatuus apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit (4 Co. 128): Fatuous, among our juriconsults, is understood for a man not of right mind; and he is called *fatuus* who is altogether foolish.

FAUBOURG.—In the French law, and in Louisiana, a district or part of a town adjoining the principal city. *See* 18 La. 286.

FAUCES TERRÆ.—The jaws of the land; projecting headlands or promontories, enclosing arms of the sea.

FAULT.—Improper action, arising from ignorance; carelessness, or negligence; omission of care. *See* BAILEE, § 1; CULPA; DOLUS; NEGLIGENCE.

FAULTS, ALL, (sale of goods with). 118 Mass. 242; 5 Barn. & Ald. 240.

FAUSETUM.—A faucet, musical pipe or flute.

FAUTORS.—Favorers or supporters of others; abettors of crimes &c.—*Cowell*.

FAUX.—

§ 1. In the French law.—A falsification or fraudulent alteration or suppression of a thing by words, by writings, or by acts without either. (*Biret, Vocabulaire des Six Codes.*)—*Bouvier*.

§ 2. In old English law.—False; counterfeit. Thus, *faux actio*, a false action; *faux moneta*, counterfeit money.

FAVOR.—Affection; bias; partiality; prejudice. *See* CHALLENGE, § 3.

Favorabilia in lege sunt fiscus, dos vita, libertas (*Jenk. Cent.* 94): Things favorably considered in law are the treasury, dower, life, liberty.

Favorabiliores rei potius, quam actores, habentur (*D.* 50, 17, 125): The condition of the defendant must be favored rather than that of the plaintiff. In other words, *Melior est conditio defendantis*.

Favorabiliores sunt executiones aliis processibus quibuscunque (*Co. Litt.* 289): Executions are preferred to all other processes whatever.

Favores ampliandi sunt; odia restringenda (*Jenk. Cent.* 186): Favors are to be enlarged; things hateful restrained.

FEAL.—Tenants by knight-service, who swore to their lords to be *feal* and *leal*, i. e. faithful and loyal.

FEAL AND DIVOT.—A right in Scotland, similar to the right of turbary in England, for fuel, &c.—*Wharton*.

FEALTY.—NORMAN-FRENCH; from Latin, *fideltas*, faithfulness.

§ 1. A service which every free tenant (except tenant in frankalmoign) was in theory bound to perform to his feudal lord. (*Co. Litt.* 67 b; *Litt.* § 131.) It was, therefore, an incident to every seignory (*q. v.*), and was due on every change of the tenancy or the seignory (*Litt.* §§ 148, 149); but it is in practice completely obsolete. (*Wms. Seis.* 12.) The ceremony of fealty consisted in the tenant taking an oath of fidelity to the lord. *See* the ceremony described in *Litt.* § 91; *Co. Litt.* 68 a.

§ 2. Fealty is also one of the incidents of tenure due from every copyhold tenant to the lord of the manor in respect of his customary tenement. It consists in swearing to be faithful in performing the services of the tenancy, and may be required on every change of the lord or tenant; but in practice it is always respited. *Elt. Copyh.* 178; *Litt.* § 132. *See* ALLEGIANCE; SERVICE; SUBTRACTION.

FEALTY, (oath of). 1 Bl. Com. 367; 2 *Id.* 86. — (subtraction of). 3 Steph. Com. 533.

FEAR.—*See* DURESS; PUTTING IN FEAR.

FEASANCE means "doing." (*See* MALFEASANCE; MISFEASANCE; NONFEASANCE; SERVICE.) *Feasor*, a doer, or maker.

FEASTS.—Anniversary days of rejoicing, either on a civil or religious occasion. Opposed to fasts. In England feasts are either (1) "immovable," such as Christmas-day, the Circumcision, Epiphany, Candlemas-day, Lady-day, All Saints, and All Souls, besides the days of the several apostles, St. Peter, St. Thomas, &c.; these are always celebrated on the same day of the year; or (2) "movable," such as Easter, which fixes all the rest, as Palm Sunday, Good

Friday, Ash Wednesday, Sexagesima, Ascension-day, Pentecost, Trinity Sunday, &c.—*Wharton*.

FECIAL LAW.—A Roman law relative to declarations of war and treaties of peace.

FECIALES.—Among the Romans, a body of priests or heralds whose office was to act as ambassadors, and (at a later period) to declare war and make peace.—*Calv. Lex.* 1 Kent Com. 6.

FEDERAL.—Belonging to or appertaining to the federal government (*q. v.*)

FEDERAL GOVERNMENT.—When two or more sovereign or independent States mutually agree not to exercise certain powers incident to their several sovereignties, but to delegate the exercise of those powers to some person or body chosen by them jointly, there is said to be a federal union of those States, and the person or body to whom the exercise of such powers is delegated is called the federal government. The Swiss Confederation, and the United States of America, are instances of federal governments.—*Wharton*.

FEE.—NORMAN-FRENCH: *fee, fe, fie*; LOW LATIN: *feodum*, from Gothic, *faihu*, property (modern German *vieh*, cattle). *Feodum* originally meant land granted in consideration of services to be rendered, as opposed to *allodium*, or land held absolutely. Litt. Dict. s. v. Fief; Diez. Worth. s. v. Fio; Digby Hist. R. P. 59 n. (9).

§ 1. Fee is applied to property to denote that it has the quality of descending to the heirs of the owner for the time being if he does not dispose of it during his life or by his will, supposing he has power to do so. Thus, an office or annuity in fee is one which descends to the heir of the holder for the time being on his death intestate. (See ANNUITY; OFFICE.) The term is, however, chiefly of importance as applied to land, estates of inheritance in land being called "estates in fee." Litt. § 1.

Fees are of two principal classes, fee-simple and fee-tail.

§ 2. **Fee-simple.**—An estate in fee-simple is the greatest estate or interest which the law allows any person to pos-

sess in landed property. (*Id.* § 11.) The owner of an estate in fee-simple is absolute owner of the land or other realty; he may put it to any use, lease it, mortgage it, sell it or give it away; if he dies without having disposed of it during his lifetime, or by his will, it descends to his heir according to the rules of descent (*q. v.*)

§ 3. An estate in fee-simple is properly created by the words "and his heirs" following the name of the grantee; thus, a conveyance of land to "A. and his heirs" gives A. an estate in fee-simple. A conveyance to "A." without more, or "to A. forever," or to "A. and his assigns," or the like, without the word "heirs," gives A. only an estate for life. In a devise by will, however, the word "heirs" is not required, as a gift of land by will to A., without more, vests in A. all the estate which the testator had, whether a fee-simple or a less estate. (Wms. Real Prop. 216.) In a conveyance to a corporation sole the word "successors" is substituted for "heirs." The word is not required in a conveyance to a corporation aggregate, but it is not uncommonly so used.

§ 4. An estate in fee-simple may be either absolute, as where land is given to a man and his heirs, without more, or determinable, where some words are added which may put an end to it on the happening of a certain event. This may be (1) where a condition is added. Thus, if an annuity is granted to a man and the heirs of his body, he has a fee-simple conditional on his having issue.* If he has issue the condition is performed, so that he can alien or charge the annuity; but if he does not alien it, it descends to his eldest son, subject to the same condition; (2) by limitation, as where land is granted to A. to hold to him and his heirs so long as C. has heirs of his body; this is a fee-simple "qualified" (formerly also called a "base fee"), (Seymour's Case, 10 Co. 97 b; Co. Litt. 1 b, 341 a; Prest. Est. 117, 122, where another sense is given to "qualified fee;") (3) by construction of law, as where

*He has not an estate tail as he would have if the thing granted were freehold land, because an annuity is not a tenement, and therefore, not within the statute *De Donis* (*q. v.*) (Prest. Est. 139; Co. Litt. 19 a; 2 Bl. Com. 113.) Before

the statute, such an estate in freehold land was called a "fee-simple conditional at the common law." As to a customary fee-simple conditional, see ESTATE, § 12.

a person seised of an estate tail grants the land to A. and his heirs. A. has an estate in fee-simple so long as the tenant in tail has heirs of his body, but as soon as those heirs fail, A.'s estate comes to an end. This, though sometimes called a fee-simple qualified or determinable, is more properly called a base fee. 10 Co. 97 b; Co. Litt. 1 b; 3 and 4 Will. IV. c. 74, §§ 1, 19. See ENLARGEMENT.

§ 5. **Fee-tail.**—As to estates in fee-tail, see ESTATE-TAIL.

§ 6. **Knight's fee.**—Formerly fee also signified the land itself. Thus, a "knight's fee" was the quantity of land which "goeth to the livelihood of a knight," and seems to have consisted of lands worth £20 a year. Litt. § 95; Co. Litt. 69 a.

§ 7. Fee also means a reward or compensation paid to the holder of an office, for some service rendered by him by virtue of his office; or to an attorney, counsellor, or physician, for professional services.

FEE, (defined). Hob. 65.
— (synonymous with "fee-simple"). 70 Me. 529, 531.

— (vested remainder in). 1 N. Y. 491.

FEE-BASE.—See BASE FEE; FEE, § 4.

FEE-CONDITIONAL.—See CONDITIONAL FEE; FEE, § 4.

FEE-EXPECTANT.—This arises where lands are given to a man and his wife, and the heirs of their bodies.

FEE FARM—FEE FARM RENTS.—In England, fee farms "are lands held in fee by rendering for them yearly the true value, or more or less." (Britt. 164 b.) Coke says, it must not be less than one-fourth of the value. (Co. Litt. 143 b.) This rent is called a fee farm rent, or simply a fee farm. (Co. Litt. 143 b.) A tenant in fee farm owes no service not expressly reserved, except fealty. (Britt. 164 b; *Termes de la Ley*.) Fee farm rents granted before the statute *Quia Emptores* are rents service; those granted since, are rent charges or rents seck, because since that statute no one can grant land to be held of himself in fee-simple. (Co. Litt. 143 b; Harg. n. 5; 1 Steph. Com. 677. See *QUIA EMPTORES*; RENT; SUBINFEUDATION; TENURE.) It is, however, a question whether the term fee farm rent is properly applicable to rents created since the statute.

FEE-SIMPLE.—See FEE, §§ 2-4.

FEE-SIMPLE, (defined). 11 Wend. (N. Y.) 277; 2 Bl. Com. 104; 1 Prest. Est. 419.

— (what words in a deed will pass). 1 Chit. Gen. Pr. 248.

— (when a deed does not convey). 42 Vt. 686.

FEE-SIMPLE, (what words in a will passes). 3 Cranch (U. S.) 97; 2 Desaus. (S. C.) 290; Dyer 357 n.; 13 Ves. 412, 415; 8 Com. Dig. 442, 553.
— (means an estate in possession and owned in severalty). 54 Me. 426, 434.

— (synonymous with "fee-simple absolute"). 45 Mo. 167, 170.

FEE-SIMPLE ABSOLUTE, (defined). 14 Ill. 304.

FEE-SIMPLE AND SEVERALTY, (in an appraiser's certificate). 52 Me. 261.

FEE-SIMPLE TITLE FREE FROM ENCUMBRANCES, (in an agreement). 5 Vr. (N. J.) 358.

FEE-TAIL.—See ESTATE TAIL.

FEEDER, (in a contract). 13 Pick. (Mass.) 50

FEES.—See FEE, § 7.

FEES, (defined). 58 Ala. 578; 10 Ind. 83; 4 Bac. Abr. 165.

— (synonymous with "charges"). 13 Conn. 1, 9; 66 Me. 123.

— (of county superintendents). 64 Ill. 149.

FEES AND COSTS, (defined and distinguished). 11 Serg. & R. (Pa.) 247, 248.

FEGANGI.—A thief caught while escaping, with the stolen goods in his possession.—*Spel. Gloss.*

FEHMGERICHTE.—An irregular tribunal in Westphalia during the thirteenth and fourteenth centuries.—*Bowyer*.

FEIGNED ACTION.—See ACTION, § 17.

FEIGNED DISEASES.—Simulated maladies. Diseases are generally feigned from one of three causes—fear, shame, or the hope of gain. Thus, a man engaged in the military or naval service may pretend to be afflicted with various maladies, in order to escape the performance of military duty; the mendicant, to avoid labor and to impose on public or private beneficence; the criminal, to prevent the infliction of punishment. The spirit of revenge, and the hope of receiving exorbitant damages, have also induced some to magnify slight ailments into alarming illnesses. On this subject, Foderé (Vol. ii. 452) observes, at the time when the conscription was in full force in France, "that it is at present brought to such perfection as to render it as difficult to detect a feigned disease as to cure a real one." Zacchias has given five rules for detecting feigned diseases—(1) Inquiry should be made of the relatives and friends of the suspected

individual as to his physical and moral habits, and as to the state of his affairs, and what may possibly be the motive for feigning disease—particularly whether he is not in immediate danger of some punishment, from which this sickness may excuse him. (2) Compare the disease under examination with the causes capable of producing it; such as the age, temperament, and mode of life of the patient. (3) The aversion of persons feigning disease to take proper remedies. This, indeed, will occur in real sickness; but it rarely happens when severe pain is present. (4) Particular attention should be paid to the symptoms present, and whether they necessarily belong to the disease. (5) Follow the course of the complaint, and attend to the circumstances which successively occur.—*Wharton*.

FEIGNED ISSUE.—A fictitious issue, or rather a true issue raised by means of a fiction; *e. g.* the plaintiff by a fiction declared that he laid a wager with the defendant that certain goods were his (the plaintiff's) goods, and then averred that the goods were his; whereupon the defendant, admitting the feigned wager, averred that the goods were not the plaintiff's goods, thus raising at once the issue as to the plaintiff's property in the goods. Formerly, in common law actions, when a question was raised on motion, and the court thought it too important to be disposed of summarily on affidavits, they might order it to be tried before a jury on a feigned issue. Questions arising in the Court of Chancery also are still frequently tried before a jury in this way. In England, feigned issues have long been rare in practice, but they do not seem to have been abolished by the new rules. (*See* **ISSUE**.) In the United States feigned issues are still resorted to in those States in which the rules of law and equity are administered in distinct courts; and in the Code States issues are framed in certain cases.

FEIGNED ISSUE, (what is). 3 Bl. Com. 452.

FEINT, or FEINT IN LAW.—*See* **ACTION**, § 17.

FELAGUS.—A companion, but particularly a friend who was bound in the *decennary* for the good behavior of another.—*Wharton*.

FELD.—Field; in composition, wild.—*Blount*.

FELE, or FEAL HOMOGERS.—Faithful subjects.

FELLOW.—(1) A companion; one with whom we consort; (2) a member of a college or corporate body.

FELLOW-HEIR.—A co-heir (*q. v.*); a partner of the same inheritance.

FELLOW-SERVANTS.—*See* **COMMON EMPLOYMENT**.

FELO DE SE.—A person who murders himself; a suicide. 1 Russ. Cr. 647. *See* **MURDER**, § 3; **SUICIDE**.

FELO DE SE, (defined). 4 Bac. Abr. 196.

FELON.—One who has committed felony; one convicted of felony. *See* **FELONY**.

FELON, (defined). 12 Ark. 608, 610.

FELON EDITOR, (meaning of, in alleged libel). 3 Ex. D. 352.

FELONIA.—(1) Felony (*q. v.*); (2) the act or offence by the commission of which a vassal lost or forfeited his fee.—*Calv. Lex.*; *Spel. Gloss.*

Felonia, ex vi termini significat quodlibet capitale crimen felleo animo perpetratum (Co. Litt. 391): Felony, by force of the term, signifies any capital crime perpetrated with a malignant mind.

Felonia implicatur in qualibet proditione (3 Inst. 15): Felony is implied in every treason.

FELONICE.—Feloniously.—*Cun. Dict.*

FELONIOUS.—Criminal; having the quality of felony (*q. v.*)

FELONIOUS, (defined). Mich. Comp. L. (1868) § 19; 4 Ohio St. 542.

FELONIOUS HOMICIDE.—Killing a human creature without justification or excuse. It is of two kinds—(1) killing one's self, or *felo de se* (*q. v.*); (2) killing another. *See* **MURDER**.

FELONIOUSLY.—A technical word, indispensable in indictments for felony: its place cannot be supplied by any other word or phrase. 4 Bl. Com. 307; 2 Hale P. C. 184; 1 Chit. Cr. L. 242; 41 Miss. 570; 24 Mo. 380; 68 N. C. 211.

FELONIOUSLY, (equivalent to "with intent to commit felony"). 8 Heisk. (Tenn.) 260.

—— (in a declaration). 3 Wils. 318.

—— (in an indictment). 2 Dall. (U. S.) 228; 7 Blackf. (Ind.) 186; 12 Minn. 293; 68 Ind. 423; 2 Mass. 409; 127 *Id.* 15.

—— (when necessary in an indictment). 24 Mo. 380; 25 *Id.* 324; 68 N. C. 211; Bish. Stat. Cr. § 387.

—— (when not necessary in an indictment). 11 Serg. & R. (Pa.) 177.

—— (synonymous with "purposely"). 17 Ind. 307.

FELONIOUSLY AND UNLAWFULLY, (in an indictment). 34 N. H. 510, 515.

FELONIOUSLY DID STEAL, (in an indictment). 41 Tex. 226.

FELONIOUSLY STOLEN, TAKEN AND CARRIED AWAY, (in a warrant of a magistrate). 6 Dowl. & Ry. 8.

FELONIOUSLY, UNLAWFULLY AND MALICIOUSLY, (in an indictment). 1 Chand. (Wis.) 166.

FELONIOUSLY, VOLUNTARILY AND MALICIOUSLY, (in an indictment for arson). 4 Car. & P. 245.

FELONIOUSLY, WILFULLY AND MALICIOUSLY, (in an indictment). 2 Stark. Ev. 66.

FELONIOUSLY, WILFULLY AND OF HER MALICE AFORETHOUGHT, (in an indictment.) 3 Car. & P. 414.

FELONIOUSLY, WILFULLY, MALICIOUSLY AND UNLAWFULLY, (in an indictment). 2 Marsh. 466.

FELONY.—OLD FRENCH: *felun, felon*, from Low Latin, *felo*, a vassal guilty of disobedience or breach of fidelity towards his lord. The ultimate derivation is unknown. See the various conjectures in Litt. s. v. and 4 Bl. Com. 95.

§ 1. At common law, every species of crime, a conviction for which occasioned the forfeiture of the lands or goods of the offender, and to which a punishment might be added according to the degree of guilt, was called felony. (4 Bl. Com. 94; Co. Litt. 391a.) Forfeiture for conviction, however, has been abolished in England, (Stat. 33 and 34 Vict. c. 23; see FORFEITURE;) and many offences have been made felonies by statute which were not felonies at common law. The common law meaning seems not to have been adopted in America, but the term is clearly defined by statute in most of the States.

§ 2. **Punishment**.—Felony is punishable in various modes, as by death or imprisonment, and, in England, by penal servitude, many felonies having special punishments attached to them. (See the titles dealing with the varieties of felony mentioned *infra*, § 3.) Where no punishment is specially provided, felony is punishable in England by penal servitude for

seven years, or imprisonment for two years, with or without hard labor, whipping and solitary confinement. (Stat. 7 and 8 Geo. IV. c. 28; Russ. Cr. 65, 186. See RECOGNIZANCE.) In America each separate offence has its appropriate punishment provided by the statute creating it. A felon is also in general incapacitated from holding certain offices (Stat. 33 and 34 Vict. c. 23), and in some jurisdictions from becoming a witness. As to the other consequences and peculiarities of felony, see Steph. Cr. Dig. 8; Harris Cr. L. 10.

§ 3. **Species of felony**.—Felony, strictly speaking, includes treason (*q. v.*), although the terms are generally used as opposed to each other. Instances of felony, in the more usual sense of the word, are: piracy, murder, manslaughter, rape, larceny, robbery, burglary, arson, some kinds of assault, and certain acts resembling treason. Steph. Cr. Dig. 36. See MISDEMEANOR.

FELONY, (defined). 8 Blackf. (Ind.) 489; 10 Mich. 169; 3 Duer (N. Y.) 373, 387; 23 N. Y. 252, 257; 18 Tex. 387, 389; 17 Am. Dec. 791 *n.*; 1 Dak. T. 5, 7; 4 Bl. Com. 94, 95; 1 Chit. Gen. Pr. 14.

—— (what constitutes). 4 Mass. 580; 1 Park. (N. Y.) Cr. 39; 2 *Id.* 685; 14 Wend. (N. Y.) 31; 4 Bac. Abr. 173.

—— (what is not). 4 Mass. 439; 7 *Id.* 245, 249; 22 N. Y. 317.

—— (in New York revised statutes). 41 N. Y. 21.

—— (indictment for). 41 Miss. 570.

FEMALE.—The sex which conceives and gives birth to young. Also, a member of such sex.

FEME, or FEMME.—A woman.

FEME COVERT.—A married woman. As to the status and disabilities of a married woman, see COVERTURE; ENGAGEMENT; MARRIAGE; SEPARATE ESTATE.

FEME COVERT, (who is not). 1 Mass. 116.

—— (execution of a deed by). 2 N. H. 175.

—— (may sell her separate property.) 8 Wheel. Am. C. L. 299.

FEME SOLE.—An unmarried woman, whether a spinster or a widow. Also, any woman who, although married, is in matters of property independent of her husband, is a *feme sole quoad* such property, and may deal with it in every

respect as if she were unmarried. *See* MARRIED WOMEN'S ACTS.

FEME SOLE, (who can be sued as). 3 Barn. & C. 291; 3 Ves. 437, 443.

FEME-SOLE MERCHANT.—A married woman who, by the custom of London, trades on her own account, independently of her husband.—*Jacob*.

FEMICIDE.—The killing of a woman.—*Wharton*.

FEMININE.—Of or pertaining to females.

FENATIO.—In forest law, the fawning of deer; the fawning season.—*Spel. Gloss*.

FENCE.—

§ 1. A hedge, ditch, or structure erected for the enclosure of land, and to divide one piece of land from another.

§ 2. **Obligation to fence.**—The obligation on the owner of land to keep it fenced may exist either at common law, or by virtue of a special obligation, or by statute. At common law, a proprietor of land is only bound to keep up fences round his land if they are required to prevent his cattle from trespassing on the land of his neighbors. (Gale Easm. 515.) An owner of land may, however, be subject to a prescriptive obligation to keep the fence between his and his neighbor's land in repair. *Laurence v. Jenkins*, L. R. 8 Q. B. 274; Gale Easm. 516. *See, further*, as to quasi-easements of repair, *Id.* 530 *et seq.* *See* QUASI-EASEMENT.

§ 3. **A railway company** subject to the provisions of the English Railways Clauses Act, 1845, § 68 *et seq.*, is bound to construct and maintain fences between its line and the adjoining lands; and statutes imposing similar liabilities upon railway companies exist in many of the States. *See, further*, as to fences under titles BOUNDARIES; PARTY WALL.

§ 4. **Fencing machinery, and mines, &c.**—Under various English statutes, the duty is cast on owners of mines and machinery to keep them fenced, so as to prevent injury to persons coming near them. The most important provisions as to mines and mining machinery are contained in the Coal Mines Regulation Act, 1872, Stat. 51, §§ 4, 13, 14, 24, and the Metalliferous Mines Regulation Act, 1872, Stat. 23, §§ 6, 7, 17. The Factory and Workshop Act, 1878, § 5 *et seq.*, contains provisions as to the fencing of machinery in factories, &c.

§ 5. **Criminal law.**—Stealing or maliciously injuring or destroying fences is an offence punishable on summary conviction in England, and in some of the States.

§ 6. **In the Scotch law**, to "fence" is to protect or hedge in by certain formalities. To "fence a court" is to open court in due form of law, by proclamation of the crier. 1 Pitt. Cr. Cas. pt. I. 46 n., 75 n.

FENCE, (defined). 77 Ill. 169, 171.

— (when includes "ditch"). 1 Barn. & C. 71.; 2 Chit. Gen. Pr. 52 App.; Wilberf. Stat. L. 130.

— (passes under "land" in a will). 1 N. Y. 564.

FENCE-MONTH, or DEFENCE-MONTH.—A time during which deer in forests do fawn; when hunting them is unlawful. It begins fifteen days before Old Midsummer, and ends fifteen days after it. Manw. pt. 2, c. 13.

FENERATION.—Usury; the gain of interest; the practice of increasing money by lending.—*Wharton*.

FENGELD.—In Saxon law, a tax or imposition, exacted for the repelling of enemies.—*Cowell; Spel. Gloss*.

FENIAN.—A champion, hero, giant. This word, in the plural, is generally used to signify invaders or foreign spoilers. The modern meaning of fenian, is a member of an organization of persons of Irish birth, resident in the United States, Canada, and elsewhere, having for its aim the overthrow of English rule in Ireland.—*Webster (Supp.)*

FEOD.—*See* FEUD.

FEODAL.—Of or belonging to the feud or feud.

FEODAL ACTIONS.—Real actions. 3 Bl. Com. 117.

FEODAL SYSTEM.—*See* FEUDAL SYSTEM.

FEODALITY.—Fealty (*q. v.*)

FEODARY, or FEUDARY.—An officer of the Court of Wards, appointed by the master of that court under 32 Henry VIII. c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king, as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it. He also assigned the king's widows their dower, and received all the rents, &c. Abolished by 12 Car. II. c. 24.—*Termes de la Ley*.

FEODATORY, or FEUDATORY.—The tenant who held his estate by feudal service.—*Termes de la Ley*.

FEODI FIRMA.—In old English law, fee farm (*q. v.*)

FEODI FIRMARIUS.—The lessee of a fee farm.

FEODUM.—A fee or feud. *See* FEUD.

Feodum est quod quis tenet ex quacunque causa sive sit tenementum sive redditus (Co. Litt. 1): A fee is that which any one holds from whatever cause, whether tenement or rent.

FEODUM LAICUM.—A lay fee.

FEODUM MILITIS.—A knight's fee.

FEODUM NOBILE.—A fief for which the tenant did guard and owed homage.—*Spel. Gloss.*

FEODUM PROPRIUM.—A proper or pure fee. 2 Bl. Com. 57, 58.

FEODUM SIMPLEX.—A fee-simple.

Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura (Litt. § 1): A fee-simple, so called because fee is the same as inheritance, and simple is the same as lawful or pure; and thus, fee-simple is the same as a lawful inheritance, or pure inheritance.

FEODUM TALLIATUM.—A fee-tail.

Feodum talliatum, i. e. hæreditas in quamdam certitudinem limitata (Litt. § 13): Fee-tail; i. e. an inheritance limited in a definite descent.

FEOFFAMENTUM.—A feoffment (*q. v.*)

FEOFFARE.—To enfeoff; to bestow a fee. The bestower was called *feoffator*, and the grantee or feoffee, *feoffatus*.

FEOFFEE.—*See* FEOFFMENT.

FEOFFEE TO USES.—The person in whom, before the Statute of Uses, the legal seisin or feudal tenancy of the land was vested, the substantial and beneficial ownership or use being in the *cestui que use*. The statute destroyed the estate of the feoffee to uses, and conveyed the possession to the *cestui que use*, who has now the legal estate, his use being executed by the statute. *See* USE.

FEOFFMENT—FEOFFOR—FEOFFEE.—NORMAN-FRENCH: *feoffment*, (Britt. 209 b.) from *feoffer*, to grant a fee or feudal estate. Loysel Inst. Gloss. v. Feoffer. *See* FEE.

§ 1. A feoffment is a mode of conveying a freehold estate in possession in land from one person (the feoffor) to another (the feoffee). It was at one time almost the only mode in England of conveying freehold land in possession, but it is now practically obsolete, because the same object can, in most cases, be obtained by simpler means. Almost the only case in which a feoffment is now specially required is where an infant tenant of gavelkind land wishes to dispose of his estate; this he can do by feoffment at the age of fifteen. (Wms. Real Prop. 129.) For a form of feoffment for the purpose *see* 2 Davids. Conv. 177, 244. As to feoffments generally *see* Elphins. Conv. 98; Shep. Touch. 203; 4 Byth. & J. Conv. 37 *et seq.*

§ 2. Originally a feoffment was merely the overt or public delivery of the possession of land by the owner (the feoffor) to the grantee or purchaser (the feoffee), and consisted of the ceremony called "livery of seisin" (*q. v.*) But, for the sake of convenience, it became usual to put the terms of the conveyance in writing, as a record of the transaction; this writing was called the charter or deed of feoffment. The statute of frauds (*q. v.*) made a writing necessary in every case; and now, by the Stat. 8 and 9 Vict. c. 106, every feoffment (except one made under a custom by an infant) is void at law unless made by deed. The livery of seisin is of course still necessary. But if livery be omitted the charter of feoffment will, in ordinary cases, take effect as a grant under the Stat. 8 and 9 Vict. c. 106.

§ 3. Formerly a feoffment was an assurance of great power, for it not only cleared (*i. e.* destroyed) all disseisins, abatements, intrusions and other wrongful or defeasible estates, where the livery of seisin by the feoffor was lawful, (Co. Litt. 9 a, 49 a,) but also operated by wrong, or tortiously, where the feoffor granted a greater estate than he was entitled to, so as to confer on the feoffee the whole estate purported to be granted. Thus, if a tenant for his own life made a feoffment of the land in fee-simple, the feoffee became seised of an estate in fee-simple by wrong, which was good against every one except the reversioner; as regards him, the feoffment, being unauthorized, operated as a forfeiture of the tenant for life's estate, and entitled him to re-enter and take possession of the land.* But by the Stat. 8 and 9 Vict. c. 106, the tortious operation of a feoffment is abolished. Wms. Real Prop. 142. *See* CONVEYANCE; GRANT; OPERATIVE WORDS; USES.

FEOFFMENT, (defined). Co. Litt. 271 b, n.
— (what is not). 1 Cro. 344.

FEOFFMENT TO USES.—A feoffment directed to operate to the use of any other person than the feoffee, though it be a common law conveyance, so far as it conveys the land to the feoffee, derives its effect from the Statute of Uses, so far as the use is limited by it to the person or persons in whose favor it is declared. Thus, if A. be desirous to convey to B. in fee, he

* Butler's note to Co. Litt. 330 b. As to the mode in which this operation of a feoffment was made use of, *see* Byth. & J. Conv. iv. 44 *et seq.*

may do so by enfeoffing a third person, C., to hold to him and his heirs to the use of B. and his heirs, the effect of which will be to convey the legal estate in fee-simple to B. For since the Statute of Uses, the legal estate passes to the feoffee by means of the livery, as it would have done before; but no sooner has this taken place than the limitation to uses begins to operate, and C. thereby becomes seised to the use defined or limited, the consequence of which is that by force of the legislative enactment the legal estate is *eo instanti* taken out of him, and vests in B., for the like interest as was limited in the use, *i. e.* in fee-simple. B. thus becomes the legal tenant as effectually as if the feoffment had been made to himself, and without the intervention of a trustee. This method is not much practiced in consequence of the livery of seisin. (2 Sand. Us. 13; Watk. Conv. 288.)—*Wharton*.

FEOFFOR.—See FEOFFMENT.

FEOH.—A fee or reward; wages; a stipend.

FEONATIO.—The same as *fenatio* (*q. v.*)

FEORME.—A certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter. *Spel. Feuds c. 7.*

FERÆ NATURÆ.—Animals so described are wild animals in which there is no property, but in respect of which, or of some of them, there may be an exclusive right of preserving and of killing, which is analogous to the right of property, and which is designated game (*q. v.*) Also, property may be acquired in animals *feræ naturæ* in various ways, and principally the following: (1) *Propter industriam, i. e.* by reclaiming or taming them, &c.; (2) *propter impotentiam, i. e.* by preventing them from escaping, *e. g.* by killing, wounding, clipping wings, &c., and (3) *ratione privilegii, i. e.* as being in and belonging to a forest, or chase, or park, or even a warren. See ANIMAL, § 2.

FERÆ NATURÆ, (what animals are). 9 Pick. (Mass.) 15; 7 Johns. (N. Y.) 16; 2 Com. Dig. 271.

—— (what are not). 1 Cow. (N. Y.) 243.

—— (can only be qualified property in). 2 Kent Com. 394; 2 Bl. Com. 391; 1 Chit. Gen. Pr. 87.

—— (are not the subject of larceny). 5 N. H. 203; 4 Com. Dig. 761.

FERDELLA TERRÆ.—A fardel-land; ten acres; or perhaps a yard-land.—*Cowell*.

FERDFARE.—See FERDWIT.

FERDINGUS.—Apparently a freeman of the lowest class, being named after the *cotseti*—*Anc. Inst. Eng.*

FERD WITE.—An acquittance of manslaughter committed in the army; also, a fine imposed on persons for not going forth on a military expedition.—*Cowell*.

FERIA.—In old English law, (1) a week-day; a holiday; a day on which process could not be served; (2) a fair; (3) a ferry.—*Cowell*; *Du Cange*; *Spel. Gloss.*

FERIÆ.—In the Roman law, holidays; generally speaking, days or seasons during which free-born Romans suspended their political transactions and their law suits, and during which slaves enjoyed a cessation from labor. All *feriæ* were thus *dies nefasti*. All *feriæ* were divided into two classes—"feriæ publicæ" and "feriæ privatæ." The latter were only observed by single families or individuals, in commemoration of some particular event which had been of importance to them or their ancestors.—*Smith Dict. Antiq.*

FERIAL DAYS.—Holidays; also, week-days as distinguished from Sunday.—*Cowell*.

FERITA.—A wound.—*Spel. Gloss.*

FERLING.—In old English law, the fourth part of a penny; also, the quarter of a ward in a borough.

FERLINGATA.—A fourth part of a yard-land.

FERLINGUS, or FERLINGUM.—A furlong (*q. v.*) Co. Litt. 5 b.

FERM, or FEARM.—A house or land, or both, let by lease.—*Cowell*.

FERMARY.—An hospital.—*Jacob*.

FERME.—A farm; a lease; a rent. See FARM.

FERMENTED BEER, (what is). 3 Den. (N. Y.) 437, 450.

FERMENTED LIQUOR, (synonymous with "malt liquor"). 21 Int. Rev. Rec. 115.

FERMER, or FERMOR.—A lessee; a tenant for years; a farmer.

FERMIER.—One who farms any public revenue in France.

FERMISONA.—The winter season for killing deer.

FERNIGO.—A piece of waste ground where ferns grow.—*Cowell*.

FERRATOR.—A farrier (*q. v.*)

FERRIAGE.—The fare or toll paid at a ferry for the transportation of persons and property.

FERRIAGE, (defined). 35 Cal. 606, 618.

FERRUM.—A horse-shoe.

FERRY.—A franchise conferring the right to keep a boat or boats for ferrying passengers and property; to charge tolls for so doing, and to prevent other persons from setting up another ferry so near as to diminish the custom. 2 Bl. Com. 38.

FERRY. (defined). 29 Conn. 210, 224; 42 Me. 9; 7 Pick. (Mass.) 344, 393; 30 Barb. (N. Y.) 305, 310; 13 Serg. & R. (Pa.) 424; 12 Am. Dec. 295 n.; 12 Com. B. N. S. 32; 12 East 330, 335 n.; Willes 508, 512 n.

— (what is). 2 Dill. (U. S.) 332.

— (action for a disturbance of). 6 Barn. & C. 703.

— (does not pass by conveyance of the adjacent soil). 1 Bail. (S. C.) 469.

— (ejectment will not lie for). 5 Wheel. Am. C. L. 12.

— (grant to establish). 20 N. Y. 370.

— (is a franchise and is not the subject of levy and sale under execution). 5 Cal. 470.

— (lease of). 11 Pet. (U. S.) 420.

FERRYMAN.—The proprietor of a ferry.

FERRYMAN, (defined). 2 McCord (S. C.) 47, 48.

FESANCE — *See* FEASANCE.

FESTA IN CAPPIS.—Grand holidays, on which choirs wore caps.—*Jacob*.

Festinato justitæ est noverca infortunii (Hob. 97): Hasty justice is the step-mother of misfortune.

FESTING-MEN.—*See* FASTERMANS.

FESTING-PENNY.—Earnest given to servants when hired or retained in service.—*Cowell*.

FESTINUM REMEDIUM.—A prompt redress; a speedy remedy. *See* 3 Bl. Com. 184.

FESTUM.—A feast.—*Tomlins*.

FESTUM STULTORUM.—The feast of fools.

FETTERS.—Irons by which one accused or convicted of crime, is secured by the legs. When put on the wrist they are called "handcuffs."

FEU, or FEW.—A free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. Feu, in Scotland, means vassal-tenure, in contradistinction to ward-holding, or military tenure, being that holding where the vassal, in place of military service, makes a return in money which is called the "feu-duty" or "feu-annual."—*Wharton*.

FEU-ANNUALS.—*See* FEU.

FEU-HOLDING.—*See* FEU.

FEUAR.—The tenant of a feu.

FEUD.—*GOthic: faihu; ANGLO-SAXON: feoh*, property. 1 Stubbs Hist. Const. 251, n. (1).

In the middle ages, a feud was a grant of land by a feudal superior or lord, to be held by the grantee (the feudal inferior or tenant,) in return for services to be rendered by him. The word is used to signify the interest of the tenant (Spel. Feuds 2), and also the land itself. *See* FEE.

FEUD, (origin of). Washb. Real Prop. 81.

FEUDA.—Fees.

FEUDAL—FEUDAL LAW.—Feudal is the adjective from *feud*, *e. g.* the feudal law signifies the doctrine of *feuds*. *Feudal possession* is the same thing as *seisin*; and *feudal actions* is the old name for *real actions*. Thus, a tenant for years had not the feudal possession, and consequently had no real action, for a man's remedies are necessarily only commensurate in extent and in quality with his rights.—*Brown*.

FEUDAL SYSTEM.—

§ 1. The name given to certain institutions which prevailed in the principal States of Europe during the middle ages, and regulated both the tenure of land and the political and social system in each State.

§ 2. As to the land, the peculiarity of the feudal system was the division of the ownership. The absolute or nominal ownership (*dominium directum*) was in one person, the lord or feudal superior; while the occupation, use and benefit of the land (*dominium utile*) was in another person, the tenant or feudal inferior. In consideration of having the use of the land the tenant rendered his lord certain services (*q. v.*), which in the feudal system proper were principally of a military nature, and the lord was further entitled to certain incidents or casual profits. *See* INCIDENTS.

§ 3. With regard to the social and political system, the relation of landlord and tenant was a mutually protective one, *i. e.* each was bound to assist and protect the other in case of danger (*see* FEALTY); and it was exclusive, *i. e.* no one had any right to interfere between them, though the lord himself might be tenant to a yet higher superior: thus, A. might be tenant to B., and B. tenant to C., but C. would have nothing to do with A. Hence, in the pure feudal system, the king or other head of the State was to a great extent merely a feudal lord, having no right to the allegiance of his tenants' tenants; but this was never so in England; for although since the Norman conquest, when the feudal system was introduced, all lands in England "are holden mediately or immediately of the king" (Co. Litt. 1a), yet he has always been the feudal superior not only of his tenants in chief, but also of their tenants and tenants' tenants. The oath of allegiance from inferior tenants was not exacted until the Council of Salis-

bury (1086), but the feudal system does not seem to have been completely introduced until that time. 1 Stubb. Const. Hist. 266. *See, further,* as to the feudal system generally, Spel. Feuds and Gloss. v. Feodum; Butler's note to Co. Litt. 191a; 2 Bl. Com. 44; 1 Hallam Const. Hist. 163; Fustel de Coulanges *Inst. de l'Ancienne France*.

§ 4. It will be seen from the titles ESTATE, INCIDENTS, SEIGNORY, SUBINFEUDATION, TENURES, that but few traces of the feudal system now survive, except in the rules of descent, in the operative words required to pass an estate of inheritance by deed (*see* FEE, § 3; HEIR,) and in the law of copyholds.

FEUDATORY.—*See* FEODATORY.

FEUDBOTE.—A recompense for engaging in a feud, and the damages consequent, it having been the custom in ancient times for all the kindred to engage in their kinsman's quarrel.—*Jacob*.

FEUDE, or DEADLY FEUDE.—A German word, signifying implacable hatred, not to be satisfied but with the death of the enemy. Such is that amongst the people in Scotland and in the northern parts of England, which is a combination of all the kindred to revenge the death of any of the blood upon the slayer and all his race.—*Termes de la Ley*.

FEUDIST.—A writer on feuds, as Cujacius, Spelman, &c.

FEUDO.—In Spanish law, a feud or fee.

FEUDORUM LIBRI.—The books of feuds, published during the reign of Henry III., about the year 1152. The particular customs of Lombardy, as to feuds, began to be the standard and authority to other nations, on account of the greater refinement with which that kind of learning had been there cultivated. It is probable that this compilation was known in England, but it does not appear that it had any other effect than influencing English lawyers to study their own tenures with more diligence, and work up the learning of real property, with much curious matter of a similar kind. "Thus, tenures in England continued a peculiar species of feuds, partaking of certain original qualities in common with others; but when once established here, growing up with a strength and figure entirely their own. While most of the nations of Europe referred to the books of feuds as the grand code of law by which to correct and amend the imperfections in their own tenures, there is not in English law books any allusion that intimates the existence of such a body of constitutions." 2 Reeves Hist. Eng. Law 55.

FEUDUM.—A feud, fief or fee. *See* FEUD.

FEUDUM ANTIQUUM.—A feud which devolved upon a vassal from his intestate ancestor. 2 Bl. Com. 212.

FEUDUM APERTUM.—An open feud; one resulting back to the lord, where the blood

of the person last seised was utterly extinct. 2 Bl. Com. 245.

FEUDUM FRANCIUM.—A free or frank fief or fee.—*Spel. Gloss*.

FEUDUM IMPROPRIUM.—An improper or derivative fief. 2 Bl. Com. 58.

FEUDUM INDIVIDUUM.—An indivisible fief which was descendible to the eldest son alone. 2 Bl. Com. 215.

FEUDUM LIGIUM.—A liege feud; one held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 Bl. Com. 367.

FEUDUM MATERNUM.—A maternal fief; a fief descended to the feudatory on the part of his mother. 2 Bl. Com. 212.

FEUDUM NOVUM.—A feud acquired by a vassal himself. 2 Bl. Com. 212.

FEUDUM NOVUM UT ANTIQUUM.—A new fief held with all the qualities of an ancient one. (2 Bl. Com. 212.) Every fee-simple estate, although newly acquired by purchase or devise, and although being therefore a *feudum novum*, is regarded in law as a *feudum antiquum* for the purpose of making the collaterals of the first owner capable of inheriting the same, in accordance with the canons of descent, the principle underlying all which is that the land is only inheritable where there is any of the blood of the original feudal grantee.

FEUDUM PATERNUM.—A paternal feud; one descendible only to the heirs on the father's side. 2 Bl. Com. 223.

FEW DAYS, (in a letter giving notice of the dishonor of a bill of exchange). 2 Car. & P. 300.

FIANZA.—In Spanish law, the contract of guaranty or suretyship.

FIAR.—In the Scotch law, opposed to *life-renter*. The person in whom the property of an estate is vested, subject to the life-renter's estate.

FIARS PRICES.—The value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiar prices, or when no price has been stipulated. (Ersk. L. 1, tit. 4, § 6.)—*Wharton*.

FIAT.—Let it be done. In English procedure, a fiat is a memorandum written on a document by a judicial officer, giving leave to take some step. Thus, in chancery practice, when a petition is presented, the master of the rolls' secretary writes a fiat on it, directing all parties to attend on a certain day when the petition will be heard. (Dan. Ch. Pr. 1433-35. *See* PETITION.) So, in patent law, the fiat of the attorney-general, or other law officer, must be

obtained before a disclaimer or memorandum of alteration can be filed. (Stats. 5 and 6 Will. IV. c. 83; 15 and 16 Vict. c. 83, § 39.) In criminal procedure, a writ of error cannot be sued out unless the attorney-general grants his fiat for that purpose. Archb. Cr. Pl. 199.

FIAT IN BANKRUPTCY.—The authority of the English lord chancellor to a commissioner of bankrupts, which authorized him to proceed in the bankruptcy of a trader mentioned therein. It was abolished by 12 and 13 Vict. c. 106, and a petition for adjudication substituted.

Fiat jus, ruat justitia: Let law prevail, though justice fail.

Fiat justitia, ruat cœlum: Let right be done, though the heavens should fall.

Fiat prout fieri consuerit, nil temere novandum (Jenk. Cent. 116): Let it be done even as it is accustomed to be done; let nothing be innovated rashly.

FIAUNT.—Warrant.

Fictio cedit veritati. Fictio juris non est ubi veritas: Fiction yields to truth. Where there is truth, fiction of law exists not.

Fictio legis inique operatur alicui damnum vel injuriam (3 Co. 36): A legal fiction does not properly work loss or injury, i. e. *In fictione juris semper æquitas existit.*

FICTION.—A fiction is a rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. (Best Ev. 419.) Formerly the practice and jurisdiction of the courts rested largely on fictions; thus, the Court of King's Bench acquired jurisdiction in actions for debt, &c., by surmising (i. e. feigning) that the defendant had been arrested for a trespass which he had never committed, and then allowing the plaintiff to proceed against him for debt. (3 Bl. Com. 43.) Fictions are now of little importance. As to importance of fictions in the history of law, see Maine Anc. L. 21 et seq. See COLOR; COLORABLE.

FIDE-JUSSIO.—The act of a man in binding himself as an additional surety for another without affecting in any way the principal's liability.

FIDE-JUSSOR.—A surety, or one that obliges himself in the same contract with a principal, for the greater security of the creditor or stipulator.

FIDE-PROMISSOR.—See FIDE-JUSSOR.

FIDEI-COMMISSARIUS.—This word denoted in Roman law the person who in English law is called the *cestui que trust*, and the word *fiduciarius* denoted the person who in English law is called the "trustee." The *prætor fidei-commissarius* was an officer who corresponded to the English lord chancellor. The Anglicised expression "fide-commissary" has been proposed as a substitute for the phrase *cestui que trust*, but has never been extensively adopted.

FIDEI-COMMISSUM.—A testamentary disposition, by which a person who gives a thing to another imposes on him the obligation of transferring it to a third person. The obligation was not created by words of legal binding force (*civilia verba*), but by words of request (*precative*), such as *fidei committo, peto, volo dari*, and the like, which were the operative words (*verba utilia*). If the object of the *fidei-commissum* was the *hæreditas*, the whole or a part, it was called *fidei-commissaria hæreditas*, which is equivalent to a universal *fidei-commissum*; if it was a single thing, or a sum of money, it was called *fidei-commissum singulæ rei*. The obligation to transfer the former could only be imposed on the heir; the obligation of transferring the latter might be imposed on a legatee. It appears that there were no legal means of enforcing the due discharge of the trust called *fidei-commissum*, till the time of Augustus, who gave the consuls jurisdiction in *fidei-commissa*. *Fidei-commissa* seem to have been introduced in order to evade the civil law, and to give the *hæreditas*, or a legacy to a person who was either incapacitated from taking directly, or who could not take as much as the donor wished to give. Gaius, when observing that *peregrini* could take *fidei-commissa*, observes, that "this" (the object of evading the law) "was probably the origin of *fidei-commissa*," but by a *senatus-consultum*, made in the time of Hadrian, such *fidei-commissa* were claimed by the *fiscus*. *Fidei-commissa* were ultimately assimilated to legacies. (2 Gaius 247-289; Ulp. Frag. tit. 25; Sand. Just. (5 edit.) 246-259).—Wharton.

FIDEI-COMMISSUM, (defined). 3 La. Ann. 432, 433.

FIDELIS.—Faithful; trustworthy.

FIDELITAS.—Fealty; fidelity.

Fidelitas. De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum (Co. Litt. 676): Fealty. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.

FIDEM MENTIRI.—When a tenant does not keep that fealty which he has sworn to the lord. Leg. Hen. I. c. 53.

FIDES.—Faith; honesty; confidence; trust; veracity, honor.

Fides est obligatio conscientiae alicujus ad intentionem alterius (Bacon): A trust is an obligation of conscience of one to the will of another.

Fides servanda est; simplicitas juris gentium praevaleat: Faith must be kept; the simplicity of the law of nations must prevail.

FIDUCIA.—In the Roman law, if a man transferred his property to another, on condition that it should be restored to him, this contract was called "*fiducia*," and the person to whom the property was so transferred was said *fiducium accipere*. (Cic. Top. 10.) A man might transfer his property to another for the sake of greater security in time of danger, or for other sufficient reasons. 2 Gaius 60.

FIDUCIARIUS TUTOR.—In the Roman law, a *fiduciarius tutor* was the elder brother of an emancipated *pupillus*, whose father had died leaving him still under fourteen years of age.

FIDUCIARY.—A person is said to stand in a fiduciary relation to another when he has rights and powers which he is bound to exercise for the benefit of that other person. Hence, he is not allowed to derive any profit or advantage from the relation between them, except with the knowledge and consent of the other person. Such is the relation between trustee and *cestui que trust*, attorney and client, principal and agent, and generally wherever from the position of two persons, one of them reposes confidence in the other. (Snell Eq. 403.) Promoters and directors also stand in a fiduciary relation to their companies. Liquidators of Imperial Merc. Credit Ass. v. Coleman, L. R. 6 H. L. 189; Erlanger v. New Sombrero Co., 3 App. Cas. 1218; 5 Ch. D. 73.

FIDUCIARY, (defined). 8 How. (N. Y.) Pr. 298.

—— (embraces what). 4 Abb. (N. Y.) Pr. n. s. 483.

—— (who is not). 16 Conn. 219, 223.
—— (in bankrupt act). 54 Ala. 378; 127 Mass. 41; 68 N. Y. 267; 29 Gratt. (Va.) 280.

FIDUCIARY CAPACITY, (acting in, what is). 4 E. D. Smith (N. Y.) 139; 14 How. (N. Y.) Pr. 131, 136; 17 Id. 420; 24 Id. 274; 4 Sandf. (N. Y.) 707.

—— (acting in, what is not). 2 How. (U. S.) 202; 15 Gray (Mass.) 547; 8 How. (N. Y.) Pr. 14; 15 Id. 97.

—— (in bankrupt act). 72 Ill. 435; 7 Metc. (Mass.) 328.

FIDUCIARY CAPACITY, (in debtors' act). 13 Ch. D. 338.

—— (in a statute). 2 La. Ann. 1023; 50 Barb. (N. Y.) 226; 1 Code (N. Y.) 87; 5 Den. (N. Y.) 269.

FIDUCIARY CHARACTER, (acting in, what is). 54 Ga. 125; 72 N. C. 463.

—— (in a statute). 5 Biss. (U. S.) 324; 41 N. H. 312.

—— (in bankrupt act). 39 Ind. 463; 27 La. Ann. 257; 104 Mass. 245; 47 Mo. 385; 49 N. H. 312; 42 Tex. 1; 4 Am. Rep. 326; 6 Id. 232; 13 Id. 281; 19 Id. 40; 21 Id. 554.

FIDUCIARY DEBT, (what is). 7 Metc. (Mass.) 152.

FIEF.—A fee; a feud; a manor; a possession held by some tenant of a superior. Fiefs were originally called *terræ jure beneficii concessæ*, and it was not till under Charles le Gros, the term "*fief*" began to be in use.—*Du Cange*. See FEUD.

FIEF D'HAUBERT.—The Norman phrase for knight-service; a knight's fee.

FIEF TENANT.—The holder of a fief or fee.

FIEL.—In Spanish law, an officer in whose hands a thing in dispute is judicially deposited; a receiver. Las Partid. pt. 3, tit. 9, l. 1.

FIELD, (defined). 81 N. C. 585, 587; 1 Chit. Gen. Pr. 160.

FIELD, IN THE, (with reference to the military service). 42 Vt. 726, 729.

FIELD REEVE.—An officer elected, in England, by the owners of a regulated pasture (see PASTURE) to keep in order the fences, ditches, &c., on the land, to regulate the times during which animals are to be admitted to the pasture, and generally to maintain and manage the pasture subject to the instructions of the owners. General Inclosure Act, 1845, § 118.

FIELDAD.—In Spanish law, sequestration; the judicial deposit of something the title to which is in dispute.

FIERDING COURTS.—Inferior ancient Gothic courts, so called because four were established within every superior district or hundred. 3 Bl. Com. 34.

FIERI FACIAS—FIERI FECI—FI. FA.—

§ 1. A *fieri facias*, or *fi. fa.*, is a writ of execution to levy a judgment debt. It commands the sheriff or other officer to whom it is directed to levy or *cause to be made* of the goods and chattels of the debtor (including his chattels real) the sum recovered by the judgment with interest. In executing the writ, the officer enters upon the premises in which the execution debtor's goods are (if he can do so peace-

ably and without breaking open any outer door), and leaves one of his assistants in possession of them. After the seizure, the officer makes an inventory of the goods, removes and sells them, or sells them on the premises, if the debtor, or the person on whose premises the goods are, consent to it. (Sm. Ac. 186; 3 Steph. Com. 583. As to what goods may be taken under a *feri facias*, see GOODS.) When the writ becomes returnable (see RETURN), the sheriff returns either *feri feci*, *i. e.* that he has levied the sum named in the writ, or a part of it, which he is ready to pay to the execution creditor; or that he has taken goods which remain unsold for want of buyers (see DISTINGUAS NUPER VICECOMITEM; VENDITIONI EXPONAS); or *nulla bona*, *i. e.* that the execution debtor has no goods within his bailiwick. Smith Ac. 186; 3 Steph. Com. 583. See LEVARI FACIAS; WRIT.

§ 2. **Fieri facias de bonis ecclesiasticis.**—In England, when the sheriff to a common *feri facias* returns *nulla bona*, and that the defendant is a beneficed clerk not having any lay fee, the plaintiff may sue out a *feri facias de bonis ecclesiasticis*, directed to the bishop of the diocese (or to the archbishop, during a vacancy of the bishop's see), commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese, the sum therein mentioned. This is done by issuing a *sequestration (q. v.)* to levy the debt out of the tithes and other profits of the defendant's benefice. Archb. Pr. 1062; Sm. Ac. (11 edit.) 275, 396.

§ 3. **Fieri facias de bonis testatoris** is the writ issued on an ordinary judgment against an executor when sued for a debt due by his testator; if the sheriff returns to this writ *nulla bona*, and a *devastavit (q. v.)*, the plaintiff may sue out a *feri facias de bonis propriis*, under which the goods of the executor himself are seized. 1 Wms. Saund. 246; Sm. Ac. (11 edit.) 368. See DEVASTAVIT; JUDGMENT; SCIRE FIERI INQUIRY.

FIERI FECI.—I have caused to be made. A return made by a sheriff when he has executed a writ of execution.

Fieri non debet, sed factum valet (5 Co. 39): It ought not to be done, but, being done, it is valid.

FIFTEENTHS.—A tribute or imposition of money anciently laid generally upon cities, boroughs, &c., throughout the whole of England; it amounted to a fifteenth of that which each city or town was valued at, or of every man's personal estate.

FIGHT.—See CHALLENGE TO FIGHT.

FIGHT, (what constitutes). 73 N. C. 150, 155.

FIGHTWITE.—A fine or mulct imposed for making a quarrel to the disturbance of the peace.—*Cowell*.

FIGURES.—The numerical characters by which numbers are expressed or written, as the ten digits, which are usually called the Arabic or Indian figures, from their supposed origin; while the Roman numerals are made with letters of the alphabet. The 6 Geo. II. c. 14, allowed expressing numbers by Arabic figures in all writs, &c., pleadings, rules, orders, and indictments, &c., in courts of justice, as had been commonly used, notwithstanding the 4 Geo. II. c. 26.

FIGURES, (in the caption of an indictment). 6 Wheel. Am. C. L. 13.

— (judgment entered in). 1 Halst. (N. J.) 125; 3 *Id.* 175; 6 *Id.* 178.

FILACER, FILAZER, or FILIZER.

—An officer of the superior courts of Westminster, who filed original writs, &c., and issued processes thereon. 2 Will. IV. c. 39, § 4; 2 and 3 Will. IV. c. 110, § 2. Abolished 1 Vict. c. 30.

FILD-ALE, or FILK-ALE.—A term applied to an extortionate practice of officers of the forest, and of bailiffs of hundreds, of compelling persons to contribute to the supplying them with drink, &c. Prohibited by the *Carta de Foresta*. 4 Inst. 307.

FILE.—

§ 1. A file is literally a piece of string or wire passing through papers relating to the same matter, to keep them together. It seems to have been the practice in olden times to fasten together in this way writs and other papers in the offices of the courts, and it is still done in the London Bankruptcy Court. In the English High Court, however, documents which are filed are merely placed in pigeon holes or tied in bundles; and this is the common practice in the American courts. Affidavits and other documents requiring filing are handed to the proper officer for that purpose.

§ 2. A document will be ordered to be taken off the file if it is scandalous or an abuse of the forms and proceedings of the court.

FILE, (a paper, defined). 14 Tex. 339.

FILED, (meaning of). 55 Mo. 301; 65 *Id.* 589.

— (in a statute). 1 Bradw. (Ill.) 145; 1 Barn. & Ad. 861.

— (when a paper is). 2 Ind. 91; 25 Minn. 81; 9 Bing. 46.

FILED IN THE OFFICE OF THE TOWN CLERK, (in a statute). 120 Mass. 130.

FILED WITH THE PLEADINGS, (in a statute). 6 Ind. 309.

FILIATE.—To ascertain the paternity of a bastard child.

Filiatio non potest probari (Co. Litt. 126): Filiation cannot be proved. But see **AFFILIATION**.

FILIATION.—(1) The relation of a son to his father; correlative to paternity. (2) The ascertainment or fixing of this relation.

FILIATION, ORDER OF, (is a judicial act). 5 Halst. (N. J.) 161.

FILICETUM.—Brackie land; land where ferns grow. Co. Litt. 4.

FILING, (what is). 1 Wyom. T. 413, 418.

— (what is not). 29 Iowa 468.

— (in a statute). 6 Ind. 309; 2 Blackf. (Ind.) 247.

— (in rule of court). 29 Iowa 468.

FILIOLUS.—A little son; a godson.—*Jacob*.

FILIUS.—A son; a child.

Filius est nomen naturæ, sed hæres nomen juris (1 Sid. 193): Son is a name of nature, but heir is a name of law.

FILIUS FAMILIAS.—An unemancipated son, yet under the power and control of his father. Story Conf. L. § 61.

Filius in utero matris est pars viscerum matris (7 Co. 8): A son in the mother's womb is part of the mother's vitals.

FILIUS MULIERATUS.—The eldest legitimate son of a woman who was illicitly connected with his father before marriage. 2 Bl. Com. 248. See **MULIER**.

FILIUS NULLIUS.—The son of nobody; i. e. a bastard.

FILIUS POPULI.—A son of the people; a natural child. See *Cowell, v. Mulier*.

FILL, (in an agreement). 10 Me. 478.

FILLED, (an office is not, until acceptance). 7 Wheel. Am. C. L. 142.

FILLING AN OFFICE, (what is). 2 N. H. 202.

FILUM.—A thread, string or wire; a file. See **FILE**, § 1.

FILUM AQUÆ.—The thread or middle of a river or stream which divides counties, townships, parishes, manors, liberties, &c.; also, the edge of a stream. *Altum filum*, high-water mark. But the phrase *medium filum aquæ* as it is usually written, means the center line of a stream of water. See **AD FILUM MEDIUM AQUÆ**, and cases there cited.

FILUM VIÆ.—The thread or middle line of a road constituting the boundary between proprietors on either side.

FIN DE NON RECEVOIR.—In the French law, a kind of plea in bar; a legal bar to an action.

FINAL, (in a statute). 2 Pet. (U. S.) 464.

FINAL ADJUDICATION, (what is). 47 Ill. 167.

FINAL AND CONCLUSIVE, (in an agreement). 5 Binn. (Pa.) 387.

— (in a statute). 42 Cal. 35, 37; 4 Halst. (N. J.) 65, 69; 6 Binn. (Pa.) 128.

FINAL AND CONCLUSIVE BETWEEN THE PARTIES, (in a statute). 3 Wheel. Am. C. L. 557.

FINAL APPEAL, (to quarter-sessions). Loft 184.

FINAL DECISION, (defined). 47 Ill. 167.

FINAL DECREE.—A conclusive decision of the court, as distinguished from an interlocutory decision. See **INTERLOCUTORY**.

FINAL DECREE, (defined). 8 Wend. (N. Y.) 242.

— (what is). 19 How. (U. S.) 283; McAll. (U. S.) 91; 1 Woodb. & M. (U. S.) 61; 6 Ala. 141; 25 Ark. 420; 106 Mass. 571; 1 Barb. (N. Y.) Ch. 21; 10 Paige (N. Y.) 131; Wright (Ohio) 522.

— (what is not). 2 N. Y. 571; 9 Paige (N. Y.) 636.

— (distinguished from "interlocutory decree"). 13 Ohio 408, 421.

FINAL DISPOSITION OF THE CAUSE, (in a statute). 14 Blatchf. (U. S.) 130.

FINAL HEARING, (in a statute). 3 Dill. (U. S.) 460, 463.

FINAL HEARING, OR TRIAL, (in a statute). 22 Gratt. (Va.) 484, 486; 24 Wis. 165.

FINAL JUDGES, (in city charter). 40 Conn. 359, 362.

FINAL JUDGMENT.—See **JUDGMENT**.

FINAL JUDGMENT, (defined). 64 Ill. 110; 3 Bl. Com. 398.

— (what is). 1 Cal. 134; 34 *Id.* 167; 46 *Id.* 204; 54 Mo. 391; 10 Nev. 405, 445.

— (what is not). 18 Wall. (U. S.) 588, 628; 13 Fla. 585.

— (in a statute). 7 Mass. 342.

FINAL JUDGMENT OR DECREE, (in judiciary act). 2 Pet. (U. S.) 449, 464.

FINAL ORDER, (defined). 18 B. Mon. (Ky.) 48, 826; 7 Bush (Ky.) 625; 4 Metc. (Ky.) 32, 236.

FINAL ORDER, (in New York code). 4 How. (N. Y.) Pr. 78.

FINAL PASSAGE, (of bill). 54 Ala. 599.

FINAL PROCESS.—As distinguished from *mesne* process, this phrase is used to denote writs of execution, such as *fi. fa.* and *elegit*, being the steps taken at the end of a successful action for the purpose of realizing the fruits of a final judgment or order. See MESNE PROCESS.

FINAL SENTENCE.—A sentence which puts an end to a case. See SENTENCE.

FINAL SENTENCE, (distinguished from "definitive sentence"). 1 Cranch (U. S.) 103.

FINAL SETTLEMENT, (decree for). 3 Paige (N. Y.) 189.

— (what is). 3 Rawle (Pa.) 420.

— (of account). 1 Halst. (N. J.) 205; 3 Rawle (Pa.) 243; 6 Serg. & R. (Pa.) 462.

FINAL TRIAL, (what is not). 19 Wall. (U. S.) 214.

FINALIS CONCORDIA.—A final or decisive agreement. See FINIS EST AMICABILIS, &c.

FINALLY DETERMINE, (in a statute). 2 Chit. Gen. Pr. 219.

FINALLY RECOVER, (in a statute). 100 Mass. 191, 193.

FINALLY SETTLED, (in a statute). 3 Rawle (Pa.) 247; 14 Serg. & R. (Pa.) 396, 397.

FINANCES.—(1) The revenue of a sovereign or State, or the money raised by loans, taxes, &c., for the public service; (2) the pecuniary resources or income of a corporation, firm, or private individual.

FINANCIER.—(1) A person employed in the economical management and application of public money; (2) one skilled in the management of financial affairs.

FIND.—To ascertain after judicial inquiry. Thus, a jury are said to find a certain amount of damages.

FIND HELP, (in a contract). 66 Me. 97.

FIND FOR THE PLAINTIFF, (in verdict of jury). 5 Yerg. (Tenn.) 98.

FINDER.—A searcher employed to discover goods imported or exported, without paying custom.—*Jacob.*

FINDER OF LOST PROPERTY.—One who discovers and takes possession of property which has been lost by the true owner. The finder, like every other

possessor of property, is entitled to the possession of it against all persons, except the true owner. *Armory v. Delamirie*, 1 Str. 504; 1 Sm. Lead. Cas. 357. See POSSESSION.

§ 2. **Larceny by.**—If a person, when he finds lost property, knows whom it belongs to, or knows that the owner can be found, and appropriates it for himself, he commits larceny. *Steph. Cr. Dig.* § 302; *R. v. Moore, Leigh & C.* 1; *R. v. Glyde, L. R.* 1 C. C. R. 139; *R. v. Thurborn*, 1 Den. C. C. 387; 1 *Crim. Law Mag.* 209.

FINDING.—A finding is a conclusion upon an inquiry of fact. Thus, when the jury in an action return a verdict, they find either generally, *i. e.* for one of the parties, or specially, *i. e.* as to certain facts. (See FACT, § 3; VERDICT.) Frequently, too, by consent of the parties, questions are drawn up and put to the jury in an action, and their answers are termed findings. Decisions upon questions of fact are also termed findings, when they are come to by substitutes for juries, *e. g.* a referee, or a judge sitting without a jury. See TRIAL.

FINDING AND ALLOWING, (in a lease). *Willis* 496.

FINE.—Fines were so called from the words with which the record of the fine began: *Hæc est finalis concordia inter*, &c.: "This is a final concord or compromise between," &c. *Wms.* 106; *Litt.* § 441.

§ 1. **Criminal.**—In criminal law, a fine is a sum of money ordered to be paid by an offender, as a punishment for his offence. A fine is at common law one of the punishments for misdemeanors, and it has been made a punishment for many offences by modern statutes. (*Greaves Cr. L.* 6; *Steph. Cr. Dig.* 7; 4 *Steph. Com.* 444. "And it is called *finis*, because it is an end for that offence." *Co. Litt.* 126 b; 8 *Co.* 39 a, 59 b.) Thus, in England, when any person has been convicted of an indictable misdemeanor punishable under the Criminal Law Consolidation Acts (24 and 25 Vict. cc. 96, 97, 98, 99, 100), the court may, in addition to or in lieu of any punishment authorized by the particular act, inflict a fine upon the offender. (4 *Broom & H. Com.* 247, 472; 4 *Steph. Com.* 444.) In the

United States, fines are to a great extent discretionary as to amount (within certain statutory limits), but the United States constitution forbids the imposition of excessive fines. Amend. Art. 8.

§ 2. **For contempt of court.**—The superior courts and courts of record (see COURT, §§ 2, 3,) have a general power of imposing pecuniary mulcts for disobedience to their orders, not only on their own officers and on parties to suits pending before them, but also on strangers, *e. g.* recusant witnesses and the like. See AMERCEMENT; CONTEMPT.

§ 3. **Copyhold fines.**—In the law of tenure, a fine is a money payment made by a feudal tenant to his lord. The only existing fines of any importance occur in copyhold lands, where upon a change in the tenancy a fine is commonly due to the lord. (Co. Litt. 59 b.) The most usual fine is that payable on the admittance of a new tenant, but there are also due in some manors fines upon alienation, on a license to demise the lands, or on the death of the lord, or other events. *Elt. Copyh.* 159.

Fines are of two kinds, arbitrary and certain.

§ 4. **Certain.**—A fine certain may be fixed by the custom at a particular sum for every admittance, when it is called a "general fine," (*Middleton v. Jackson*, 1 Ch. Rep. 33; *Toth.* 164;) or at so much for every acre, or the like; or it may be ascertained by reference to some other standard, as where the tenant is to pay a year's value for a fine.

§ 5. **Arbitrary.**—The amount of an arbitrary fine is not left to the discretion of the lord, except in those cases where the grant is purely voluntary, as where a copyhold has come into the ownership of the lord, or where a copyholder for lives, without right of renewal or power of nominating a successor, surrenders his estate for the purpose of putting in more lives. In other cases the fine, though arbitrary, must be reasonable; and the court will decide what is reasonable under the particular circumstances. (*Elt. Copyh.* 162.) In ordinary cases it must not exceed two years' improved value of the land. *Id.* 165; Co. Litt. 59 b.

§ 6. **Full—Small.**—A full fine is the highest amount which the lord can exact on an ordinary admittance, as opposed to a small or nominal fine; thus, in some manors where a person who is already a customary tenant is admitted to other copyholds he pays only a small fine certain, *e. g.* a penny. *Elt. Copyh.* 164.

§ 7. **General fine—Dropping fine.**—There are also many fines payable under particular customs and having special names; thus, in some manors there is a custom for the lord of the manor for the time being to admit each tenant to his estate, which gives him the right to hold it during the joint lives of himself and the admitting lord; on the death of the lord the tenant pays what is called a "general fine" for admittance to the succeeding lord, which gives him a

new estate during the joint lives of himself and the new lord, while on the death or alienation of the tenant his heir or devisee pays the lord a "dropping fine" for admittance. *Somerset v. France*, 1 Str., cited in *Elt. Copyh.* 160.

§ 8. **Fines on alienation.**—One of the incidents of tenure *in capite* by knight service was that a fine was due to the king on every alienation or conveyance of the land by the tenant to another person. Fines of this kind were abolished by Stat. 12 Car. II. c. 24. 2 Bl. Com. 71.

§ 9. **Fines of land.**—Before the Fines and Recoveries Act (*q. v.*) (Stat. 3 and 4 Will. IV. c. 74,) there existed a fictitious judicial proceeding known as a fine, which was formerly in common use as a mode of conveying land. It was really a compromise of a fictitious suit commenced concerning the lands intended to be conveyed, and the operation (called levying a fine) was thus performed. A *præcipe*, or writ, was sued out and the parties appeared in court; a composition of the suit was then entered into, with the consent of the judges, whereby the lands in question were declared to be the right of (*i. e.* to belong to) one of the parties. This agreement was reduced into writing, and was enrolled amongst the records of the court, so that it had the effect of a judgment of the court. On the completion of the fine a writ was issued to the sheriff of the county in which the land lay, in the same form as if a judgment had been obtained in a hostile suit, directing the sheriff to deliver seisin and possession to the person who acquired the lands. But if he was already in possession this writ was dispensed with. A fine consisted of five parts, namely, the original writ, the license to agree, or *licencia concordandi*, which was given by the leave of the court, on payment of a fine to the king, called the "king's silver." The third part was the concord or agreement, by which it was agreed that the lands were the right of the person in whose favor the fine was levied. The fourth part was a note of the proceedings, drawn up by an officer called the "chirographer;" and the fifth part was the *foot* or *chirograph* of the fine, which recited the whole proceedings. This chirograph was delivered to the parties, and was legal evidence of the fine, and was retained by the purchaser as one of his title-deeds. (Wms. Seis. 106; 2 Bl. Com. 348; 1 Steph. Com. 559; Shelf. R. P. Stat. 301.) The person to whom the land was to be conveyed was called the complainant or conusee, and he by whom it was to be conveyed the deforciant (see DEFORCEMENT) or conusor (cognisor), because he acknowledged the right of the complainant. Wms. Seis. 108; 3 Bl. Com. 174.

§ 10. The principal use of fines was to put an end to all adverse claims to the land after a certain period. For this purpose a fine required to be levied with proclamations, *i. e.* to be openly and solemnly read in court in four successive terms. Such a fine barred the claims of all persons unless they took proceedings within five years. (Wms. Seis. 109.) A common instance of this being done was when a person had acquired a tortious fee-simple by a feoffment, and wished to bar the owner of the reversion; he did this by levying a fine.

§ 11. Fines were also used by tenants in tail to effect a discontinuance of the entail (see DISCONTINUANCE), and to bar their issue in tail (Wms. Seis. 158; see RECOVERY), and to enable a married woman to join with her husband in making a conveyance of her lands, which she could not otherwise do; in such a case the wife was examined by the judges apart from her husband, in order to ascertain whether she consented freely to the conveyance. *Id.* 108. For the other operations of a fine, see Smith Fines 2; Hargrave's note to Co. Litt. 121 a n. (1).

Fines were of four kinds. Wms. Seis. 108 *et seq.*; 2 Bl. Com. 352 *et seq.*; 1 Steph. Com. 562 *et seq.*

§ 12. **Sur conusance de droit come ceo, &c.**—The first and most usual was a fine *sur conusance* (or *cognizance*) *de droit come ceo qu'il ad de son done*, i. e. a fine "on acknowledgment of right as that which he has of his gift." In other words, the fine was founded on an acknowledgment by the consor that the conusee was entitled to the land in question by virtue of a gift or feoffment to him by the consor. It was used for the conveyance of an estate in fee-simple or freehold in possession.

§ 13. **Sur conusance de droit tantum.**—A fine *sur conusance de droit tantum* ("on acknowledgment of right only") was used for passing an estate in reversion or remainder.

§ 14. **Sur concessit.**—A fine *sur concessit* ("he has granted") was where the consor, in order, as the form ran, to make an end to all disputes, granted to the conusee a new estate by way of supposed composition. This kind of fine was principally used for granting estates for life or years.

§ 15. **Sur done, &c.**—A fine *sur done*, *grant et render* ("on gift, grant and regrant") was a double fine. It had the effect of the fine *sur conusance de droit come ceo, &c.*, and of the fine *sur concessit* combined, i. e. the conusee, after the right was acknowledged to be in him, rendered or granted back to the consor or to a stranger some other estate in the land.

§ 16. **Abolition.**—Fines were abolished by the Fines and Recoveries Act (*q. v.*), which substitutes simpler modes in those cases where the operation of fines was beneficial. The Statute of Limitations (3 and 4 Will. IV. c. 27) was passed to provide for the protection of titles to land after the lapse of a certain time, without the necessity of levying a fine. See NON-CLAIM.

FINE, (as a punishment, defined). 11 Gray (Mass.) 373, 374; 4 Lans. (N. Y.) 136; 6 N. Y. 467, 495.

—(as applied to real estate, defined). 4 Bac. Abr. 245.

—(what is sufficient disseisin to support). 17 N. Y. 162.

FINE ADULLANDO LEVATO DE TENEMENTO QUOD FUIT DE ANTIQUO DOMINICO.—An abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord. — *Reg. Orig.* 15.

FINE AND IMPRISON, (court having power to, is a court of record). 1 Salk. 200.

FINE BARLEY, (distinguished from "good barley"). 5 Mees. & W. 535.

FINE CAPIENDO PRO TERRIS.—*See* DE FINE CAPIENDO PRO TERRIS.

FINE, CRIMINAL.—*See* FINE, § 1.

FINE FOR ALIENATION.—*See* FINE, § 8.

FINE FORCE.—Force, or necessity by which a person is compelled to do that which he can in nowise help.—*O. N. B.* 78.

FINE OF LAND.—*See* FINE, §§ 9–16.

FINE NON CAPIENDO PRO PULCHRE PLACITANDO.—*See* DE FINE NON CAPIENDO, &c.

FINE PRO REDISSEISINA CAPIENDO.—*See* DE FINE PRO REDISSEISINA CAPIENDO.

FINE SUR CONCESSIT.—*See* FINE, § 14.

FINE SUR CONUSANCE DE DROIT, COME CEO QUE IL AD DE SON DONE.—*See* FINE, § 12.

FINE SUR CONUSANCE DE DROIT TANTUM.—*See* FINE, § 13.

FINE SUR DONE GRANT ET RENDER.—*See* FINE, § 15.

FINEM FACERE.—To make a compromise or settlement; to make or pay a fine; to levy a fine.—*Reg. Orig.* 232; *Bract.* 106.

FINES, (in State constitution). 1 Ind. 315.

FINES AND RECOVERIES ACT.—The Stat. 3 and 4 Will. IV. c. 74. Its principal objects were: (1) To abolish fines and recoveries, and to make warranties by a tenant in tail no longer effectual for barring entails; (2) to enable a tenant in tail to bar the entail either wholly or partially by a deed enrolled, instead of by a fine or a recovery; (3) to enable a married woman, with the concurrence of her husband, to dispose of land by a deed acknowledged by her before a judge or commissioner, instead of by a fine. As to the minor provisions of the act, see Shelf. R. P. Stat. 299 *et seq.* See ACKNOWLEDGMENT, § 1; DISENTAILING DEED; FINE, § 11; RECOVERY; WARRANTY.

FINES FOR ENDOWMENT.—Fines anciently paid to the lord when a married woman was endowed; they were grounded on the feudal exactions.

FINES LE ROY.—Fines to the king. "A sum of money which one is to pay to the king for any contempt or offence; which fine every one that commits any trespass, or is convict

that he falsely denies his own deed, or did anything in contempt of law, shall pay to the king, which is called a 'fine to the king.'—*Termes de la Ley*.

FINIRE.—In old records, to fine, or pay a fine upon composition and making satisfaction.

FINIS.—An end; a fine; a boundary, or terminus; a limit.

Finis est amicabile compositio et finalis concordia ex consensu et concordia domini regis vel justiciarum (Glanv. l. 8 c. 1). A fine is an amicable settlement and decisive agreement by consent and agreement of our lord, the king, or his justices.

Finis rei attendendus est (3 Inst. 51): The end of a thing is to be attended to.

Finis unius diei est principium alterius (2 Buls. 305): The end of one day is the beginning of another. See **FULL AGE**.

FINISHED, (what is not). 121 Mass. 584.

FINISHED, TO BE PAID WHEN THE HOUSE IS, (in an order). 124 Mass. 279.

FINITIO.—An ending; death, as the end of life.—*Blount*; *Cowell*.

FINIUM REGUNDORUM ACTIO.—In the Roman law, an action for the ascertainment of the boundaries of adjacent estates. In the formulary procedure, this was one of the three actions in which (and in which alone) the *adjudicatio* was to be found, i. e. the clause in the formula which assigned to the respective owners the shares allotted or adjudicated by the *judex* to them respectively; the other two actions in which the *adjudicatio* occurred being the *familie erciscundæ*, for an aggregate or *universitas rerum*, and the *communi dividundo*, for a single or individual *res*.—*Brown*.

FINORS.—Those that purify gold and silver, and part them by fire and water from coarser metals; and, therefore, in the Statute of 4 Hen. VII. c. 2, they are also called "parters."—*Termes de la Ley*.

FIRDFARE, or FIRDWITE.—See **FERDWIT**.

FIRDIRINGA.—A preparation to go into the army.—*Leg. Hen. I.*

FIRDSOCNE.—Exemption from military service.—*Spel. Gloss.*

FIRE.—Ignition; the effect of combustion. The owners of houses in which fires arise accidentally and without negligence are not responsible for damage thereby caused to other persons. (2 Steph. Com. 236.) As to insurance against fires, see **INSURANCE**. As to incendiary fires, see **ARSON**.

FIRE, (distinguished from "explosion"). 16 Cush. (Mass.) 356.

— (policy of insurance against). 14 N. H. 341; 4 Campb. 360; Holt 126; 2 Marsh. 130; 1 Moo. & M. 90.

FIRE AND SWORD.—Letters of fire and sword were anciently issued from the privy council of Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession contrary to the order of a judge or the diligence of the law.—*Bell Diet.*

FIRE-ARMS.—This word comprises all sorts of guns, fowling-pieces, blunderbusses, pistols, &c. See **ARMS**.

FIRE-ARMS, (what are). 53 Ala. 508, 509.

FIRE BY LIGHTNING, (in a policy of insurance). 4 N. Y. 326.

FIREBARE.—A beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy.—*Cowell*.

FIREBOTE.—Fuel for necessary use, allowed to tenants out of the lands granted to them. See **ESTOVERS**.

FIRE INSURANCE.—See **INSURANCE**.

FIRE-ORDEAL.—The trial by red-hot iron, used upon accusations without manifest proof, though not without suspicion that the accused might be guilty. The accused, if he denied, was adjudged to take red-hot iron, and to hold it in his bare hand, which, after many prayers and invocations that the truth might be manifested, he must adventure to do, or yield himself guilty, and so receive the punishment that the law awarded. Some were adjudged to go blindfolded, with their bare feet, over certain plough-shares, made red-hot and laid a little distance one before another. If the accused in passing through them did chance not to tread upon them, or treading upon them, received no harm, he was declared innocent. The trial was practiced in England upon Emma, the mother of King Edward the Confessor, who was accused of dishonesty of her body with Alwyne, Bishop of Winchester. She, being led blindfolded unto the place where the glowing hot irons were laid, went forward with her bare feet, and so passed over them, and being gone past them all, and not knowing whether she were past them or not, said, "O! good Lord! when shall I come to the place of my purgation?" And having her eyes uncovered, and seeing herself to have passed them, she kneeled down and gave thanks to God, for manifesting her innocence. A like trial is recorded of Kunigund, wife unto the emperor, Henry the Second, falsely accused of adultery, who, to show her innocence, did, in a great and honorable assembly, take seven glowing irons one after another in her bare hands, and had thereby no harm. (Verstegan Rest. Dec. Intel. 65.)—*Wharton*.

FIRE POLICY.—See **INSURANCE.**

FIREWORKS.—As to the manufacture, sale, &c., of fireworks in England, and the punishment of persons letting them off in streets or public places, see Stat. 38 and 39 Vict. c. 17. This subject is also regulated by statute in the several States.

FIRKIN.—(1) A measure containing nine gallons; (2) a weight of fifty-six pounds avoirdupois, used in weighing butter and cheese.

FIRLOT.—A Scotch measure of capacity, containing two gallons and a pint.—*Spel. Gloss.*

FIRM.—

§ 1. This word denotes (1) the style or title under which one or several persons carry on business, and (2) the partnership itself, i. e. the individual members forming the partnership. The mercantile notion of a firm is that it is a body distinct from the members composing it, and having rights and obligations distinct from those of its members; in other words, a firm is, by laymen, considered as a kind of corporation. (See Lind. Part. 208.) Although this is not the legal status of a firm, yet in the following respects its quasi-corporate nature is recognized.

§ 2. **Actions by and against firms.**—In English procedure, an action may be brought by or against a firm in the name of the firm, (Rules of Court xvi. 10, 10a. A person carrying on business alone under a firm name, must sue in his own name.) and when a firm is so sued the writ may be served, at its place of business, on the manager of the business (*Id.* ix. 6); provision is also made for issuing execution against the members of the firm. (*Id.* xlii. 8, and see vii. 2, xii. 12.) In American law, however, a firm can neither sue nor be sued otherwise than in the names of the partners composing it. The firm cannot sue one of the partners, nor can one partner sue the firm. (6 Pick. (Mass.) 320; 5 Gill. & J. (Md.) 487.) But a partner may sue his copartners, as individuals, for an accounting, or to recover profits due to him. 5 Johns. (N. Y.) Ch. 417; 16 Wend. (N. Y.) 601.

§ 3. **Bankruptcy.**—In bankruptcy, where a firm becomes bankrupt, the assets of the firm (called the "joint" or "firm assets"), and the assets of each individual

partner (called the "several" or "individual assets"), are administered separately. See **JOINT.**

§ 4. Again, when several persons form a firm, and one or more of them (not being all) form another firm, the former is called the "major," and the latter the "minor," firm. The distinction is of importance, because where one of such firms becomes bankrupt, any member of the other may prove against it, notwithstanding the general rule that a partner cannot prove against the joint estate in competition with the joint creditors; and where both become bankrupt, a creditor of the two firms may prove against each. Rob. Bankr. 574, 620; Bankruptcy Act, 1869, § 37; and see *Ex parte Honey*, L. R. 7 Ch. 178.

FIRM, (action by). 5 Halst. (N. J.) 295.

FIRMA.—A tribute anciently paid towards the entertainment of the king of England for one night; also victuals, provisions, or rent.—*Cowell.* A farm; a lease; a letting.—*Spel. Gloss.*

FIRMA ALBA.—See **ALBA FIRMA.**

FIRMA FEODI.—See **FEODI FIRMA.**

FIRMAN.—An Asiatic word, denoting a decree or grant of privileges, or passport to a traveller.

FIRMARATIO.—The right of a tenant to his lands and tenements.—*Cowell.*

FIRMARIUS.—A fermor; a lessee of a term; a fructuary. 1 Reeves Hist. Eng. Law. 324.

FIRMATIO.—In forest law, the doe season.—*Cowell.* Also, a supplying with food.—*Leg. Inc.* c. 34.

FIRME.—In old records, a farm.

Firmior et potentior est operatio legis quam dispositio hominis (Co. Litt. 102): The operation of the law is firmer and more powerful than the disposition of man. For instance, the right of survivorship in joint tenancy prevails over the devise by either joint tenant of his undivided share. And the operation of law is sometimes in such a case called the "elder title."

FIRMITAS.—In old English law, an assurance of some privilege, by deed, or charter.

FIRMURA.—Liberty to scour and repair a mill-dam, and carry away the soil, &c.—*Blount.*

FIRMLY, (in a statute). 1 Browne (Pa.) 258; 4 Serg. & R. (Pa.) 135, 137.

FIRST BOAT, (agreement to forward goods by). 12 Ind. 102.

FIRST COUSINS, (in a will). 13 Cent. L. J. 5, and cases cited.

FIRST DRAWN (in an agreement). 5 Dana (Ky.) 517, 519.

FIRST FRUITS.—The whole profits of a spiritual preferment during the first year of its being held by a new incumbent. First fruits and tenths (*q. v.*) were originally payable to the Church of Rome, until by the Stat. 26 Hen. VIII. this revenue was transferred to the crown. Under Stat. 7 Eliz. c. 4, and various statutes of Anne, benefices under £50 per annum clear yearly value are discharged of first fruits and tenths; and in those cases where they are payable, the payment is spread over a period of two or (in some cases) four years. And by the Stat. 2 and 2 Anne c. 11 (or 20), the revenue of first fruits and tenths was converted into the fund commonly called "Queen Anne's Bounty" (*q. v.*) 2 Steph. Com. 532.

FIRST FRUITS, (defined). 1 Bl. Com. 284; 2 Id. 66; 2 Steph. Com. 566.

— (king is entitled to). 1 Steph. Com. 207.

FIRST HAD AND OBTAINED, (in a statute). 1 Serg. & R. (Pa.) 87, 89.

FIRST HEIR MALE OF HIS BODY, (in a will). Amb. 453.

FIRST IMPRESSION.—A case which presents to a court of law for its decision a question of law which is new, and for which there is consequently no precedent, is said to be a case of first impression.

FIRST MALE HEIR OF THE BRANCH OF MY UNCLE, (in a will). 5 Barn. & C. 48.

FIRST MORTGAGE, (defined). 11 Rep. 819.

FIRST MORTGAGE BONDS, (in State constitution). 2 Minn. 13.

FIRST OF ALL, I GIVE, (in a will). 59 Me. 325.

FIRST PLACE, IN THE, (in a will). 1 Halst. (N. J.) 133, 137; 2 Ves. Sr. 420.

FIRST PRIVILEGE OF WATER, (in grant of grist mill). 102 Mass. 451, 452.

FIRST PURCHASER.—The person who first acquired (in any way other than by descent) a landed estate, which was afterwards continued in the family, being transmitted by descent. See DESCENT, § 5.

FIRST SON; (when second born son may take under a devise to). 1 Ves. Sr. 290.

FIRST TERM, (in a statute). 1 Head (Tenn.) 49.

FISC.—LATIN: *fuscus*, a great basket.

The treasury of a prince or State.

FISCAL.—Belonging to the exchequer, revenue, or public treasury.

FISCAL AGENT, (in a statute). 27 La. Ann. 29.

FISCUS.—A wicker basket, or pannier, in which the Romans were accustomed to keep and carry about large sums of money, hence any treasure or money chest. The importance of the imperial *fiscus* led to the appropriating the name to that property which the Cæsar claimed as Cæsar, and *fiscus*, without any adjunct, was so used (Juv. Sat. iv. 54). Ultimately the word came to signify, generally, the property of the State, the Cæsar having concentrated in himself all the sovereign power; thus, the word had finally the signification of *ævarium* in the republican period. It does not appear at what time the *ævarium* was merged in the *fiscus*, though the distinction continued to the time of Hadrian. In the latter periods the words were used indiscriminately, to mean the imperial, which was the only public chest.—*Smith Dict. Antiq.*

FISH, (oysters are). 58 Me. 164.

FISH ROYAL.—The whale and sturgeon, which, when either thrown ashore or caught near the coast of England, are the property of the sovereign. It is said, that in the case of a whale it is divisible between the king and the queen, the head being the king's, and the tail the queen's. 2 Steph. Com. 448, 540. See PRE-ROGATIVE.

FISHERY.—

§ 1. **Defined**.—A fishery or piscary "is a liberty of fishing in another man's waters, or his own." (*Termes de la Ley, s. v. Piscary*; Bract. 208b; Britt. 109b.) Primarily fishery seems to have meant a several fishery. (Britt. 158b.) The popular meaning seems to be a place where fish are customarily caught with nets or hooks; also, the business of catching fish.

In English law, fisheries are either royal, public or private.

§ 2. **A royal fishery** is the exclusive right of the crown of fishing in a public river. Such a right cannot be created *de novo* since *Magna Charta*. (Rolle Abr., Prerogative le Roy, B 2, 14, 15.) If it has been granted to a subject, it is called a free fishery. *Infra*, § 8.

§ 3. **Public, or common**.—A public, or common fishery (or public common of fishery), is the right of the public to fish in the sea and in public navigable rivers as far as the tide flows. (Elt. Com. 106; Phear Rts. W. 65.) This right cannot exist if the water is subject to an exclusive right of fishery in some person or corporation.

Private fisheries are of three kinds.

§ 4. **A several fishery** or piscary (sometimes called simply a fishery or piscary, Co. Litt. 4b,) is an exclusive right of fishing in a particular water, and vested either in the owner of the soil or in some one claiming under him. Hence, if a man grants a several fishery in water belonging to him, the grantee

may exclude him from fishing there. (Co. Litt. 122a. See Shelf. R. P. Stat. 46. As to whether the ownership of the land is presumed to belong to the owner of a several fishery, see *Marshall v. Ulleswater, &c., Co.*, 3 Best & S. 732; Wms. Com. 260. And a several fishery may be confined to a particular kind of fish. *Phear Rts. W.* 63. See DERELICTION, § 3.

§ 5. A several fishery in public waters which excludes the public from fishing there, may be either in the crown, in which case it is also called a royal fishery, (*supra*, § 2,) or in a private person or body claiming under the crown; but it cannot have been created since *Magna Charta*. *Malcolmson v. O'Dea*, 10 H. L. Cas. 593; *Mayor of Carlisle v. Graham*, L. R. 4 Ex. 361; *Bristow v. Cormican*, 3 App. Cas. 641; *Saltash v. Goodwin*, 5 C. P. D. 431.

§ 6. The owner of a several fishery has a privileged property in the fish before they are caught. *Child v. Greenhill*, Cro. Car. 553. See PROPERTY.

§ 7. Common of piscary, or fishery, is the right of fishing in another man's waters, such as a pond or private river, but in common with, i. e. not in exclusion of the owner of the soil. Common of piscary is a *profit à prendre*. (Co. Litt. 122a; 2 Bl. Com. 34; Hall Com. 307;) and may be either appurtenant or in gross, but apparently not appendant. (Elt. Com. 105. See, however, *Coulson & F. Waters* 341.) The term seems to be confined to that right of fishing which the tenants of manorial land have of fishing in the waters of the lord. See Wms. Com. 137, 259; Elt. Com. 105; *infra*, § 8.

§ 8. Free fishery.—The true nature of a free fishery is a disputed point. According to Coke, it is much the same (at all events in the right which it confers) as a common of piscary, (Co. Litt. 122a, and Hargrave's note,) while Blackstone says, that a free fishery is an exclusive right of fishing in a public river, and is a royal franchise. (2 Bl. Com. 39; Elt. Com. 107.) There is no doubt that the term is used in both senses. (*Malcolmson v. O'Dea*, 10 H. L. Cas. 593.) It may be suggested, that "free fishery" originally meant merely a liberty or right of fishing created by express grant from the owner of the soil or water. Consequently, such a right, if granted by the crown, would give the right of fishing in a public river to the exclusion of all private persons (though not necessarily to the exclusion of the crown), while, if granted by the owner of a several fishery, it would give the right of fishing in his water to the exclusion of all persons except himself. In other words, it would create the right of fishing in common with him. (This view is confirmed by *Seymour v. Courtenay*, 5 Burr. 2814, where the three kinds of fisheries, "several fishery," "free fishery," and "common of fishery," are distinguished.) The term "common of fishery," having been already appropriated to denote the right of the tenants of a manor to fish in the lord's waters in common with him, (*supra*, § 7,) the term "free fishery" would conveniently be used to denote any other right of fishing in common with the owner of the water; so that, according to this view, a free fishery and a common of fishery in private waters, both confer the right of fishing

in common with the owner of the soil, and only differ in their origin. Co. Litt. 122a.

§ 9. In American law, the word "fishery" is of little importance. In some of the States the right to fish in navigable rivers, whether they contain tide-water or fresh water, i. e. whether the tide ebbs and flows in them or not, is held to be vested in the State and open to all the world (3 Ired. (N. C.) 277; 2 Binn. (Pa.) 475; 1 McCord (S. C.) 580), while in others, the common law rule prevails, viz., that the riparian proprietors have an exclusive right to fish in the rivers wherein the tide does not ebb and flow, even though navigable. (5 Day (Conn.) 72; 20 Johns. (N. Y.) 90; 62 Barb. (N. Y.) 237; 1 Pick. (Mass.) 180; 3 N. H. 321.) In some States, also, private fisheries are under legislative control, notably, Maine and Massachusetts. Fishing on the high seas, i. e. at least one marine league off shore, is common to all the world, and treaties respecting such fisheries are frequent between nations.

FISHERY, (ejectment will not lie for). 8 Mod. 275, 277.

— (in a lease and release). 4 Barn. & C. 485, 496.

— (in navigable waters, right of is common). 5 Day (Conn.) 22; 1 Conn. 382; 3 Wheel. Am. C. L. 523; 5 Id. 414.

— (right of). 4 Pick. (Mass.) 145; Ang. Waterc., § 61.

FISHERY, FREE, (not an exclusive fishery). 7 Pick. (Mass.) 79.

FISHERY LAWS.—A series of statutes passed in England, for the regulation of fishing, especially to prevent the destruction of fish during the breeding season, and of small fish, spawn, &c., and the employment of improper modes of taking fish. (3 Steph. Com. 165, where the principal acts up to 1873 are enumerated. To these may be added the Fisheries (Oyster, Crab and Lobster) Act, 1877; Fisheries (Dynamite) Act, 1877; Freshwater Fisheries Act, 1878; Salmon Fishery Act, 1879.) Statutes having the same ends in view have been passed in many if not all of the States. See GAME LAWS.

FISHGARTH.—A dam or weir in a river for taking fish.—*Cowell*.

FISHING, (right of, is a common right). 5 Day (Conn.) 72.

— (right of, is not an easement). 4 Vr. (N. J.) 223.

FISHING MILL DAM, (in fishery act). L. R. 3 Q. B. 30.

FISHING PLACE, (in a will). 1 Whart. (Pa.) 124.

FISK.—In the Scotch law, the right of the crown to the movable estate of a person pronounced a rebel.—*Bell Dict.*

FISTUCA, or FESTUCA.—In old English law, the rod or wand, by the delivery of which the property in land was formerly transferred in making a feoffment. Called, also, *baculum*, *virga* and *fustis*.—*Spel. Gloss.*

FIT OUT AND ARM, (in a statute). 2 Dall. (U. S.) 321.

FITTED OUT, (what is being). 9 Wheat. (U. S.) 409, 413; 12 *Id.* 460, 472.

FITTING UP THE PREMISES, (in a lease). 119 Mass. 439, 446.

FITZ.—A son. It is used in law and genealogy; as *Fitzherbert*, the son of Herbert; *Fitzjames*, the son of James; *Fitzroy*, the son of the king. It was originally applied to illegitimate children.—*Wharton*.

FITZHERBERT.—Anthony Fitzherbert, the author of the *Grand Abridgment*, a species of digest of the law (*see* DIGEST, § 2,) and of the *New Natura Brevium*, was a serjeant-at-law, and afterwards a judge of the common pleas, during Henry VIII.'s reign. He also wrote a work on justices of the peace.—*Reeves; Foss.*

FIVE MILE ACT.—An act of parliament passed in 1665, against nonconformists, whereby ministers of that body were prohibited from coming within five miles of any corporate town, or place where they had preached or lectured.—*Brown*.

FIX COMPENSATION OF OFFICERS, (in State constitution). 18 Ohio St. 9, 21.

FIXED BAIL, (what is). 4 Bos. & P. 67, 68.

FIXED ENGINE, (in salmon fishing act). L. R. 6 Q. B. 561.

FIXED FURNITURE, (in a will). 2 Ad. & E. 37, 41.

FIXED MACHINERY, (in a deed). 36 Conn. 87, 88.

FIXING BAIL.—Rendering absolute the liability of special bail.

FIXTURES.—Personal chattels annexed to land, *i. e.* fastened to or connected with it.* The general rule is, that if the owner or occupier of land annexes anything to the freehold, it becomes part of the freehold, so that the ownership of the chattel passes with the ownership of the freehold.† Thus, if A. sets up fixtures on his land, and then mortgages the land to B., and afterwards becomes bankrupt, the fixtures pass with the freehold to B., although all the other chattels belonging to A. pass to his trustee in bankruptcy. (*Holland v. Hodgson*, L. R. 7 C. P. 328; *Horn v. Baker*, 2 Sm. Lead. Cas. 205.) For the same reason no fixture can be taken in distress for rent. Woodf. Land. & T. 398.

§ 2. If the rule that fixtures form part of the freehold were invariable, it would have the effect of entitling every heir, devisee and reversioner of land to the fixtures left on the land by the ancestor, testator or tenant for life, instead of their passing to his personal representatives with his other chattels; it would also entitle every freeholder to all the fixtures set up by his tenants; but it is relaxed in certain cases, especially as between landlord and tenant.

§ 3. Hence, fixtures are divided into two classes: (1) Landlord's fixtures, or those which belong to the landlord; and (2) tenant's fixtures, or those which belong to and may be removed by the tenant at any

*As to fixtures generally, *see* *Elwes v. Mawe*, 3 East 38; 2 Sm. Lead. Cas. 162; *Horn v. Baker*, 9 East 215; 2 Smith 205; *Amos & F. Fixt.*; Chit. Cont. 326 *et seq.*; Woodf. Land. & T. 581 *et seq.*; 2 Sm. Lead. Cas. 182. "The term fixtures is also sometimes applied to things expressly to denote that they cannot legally be removed. . . . Thus it has been said that an article shall fall in with the lease to the landlord, or descend to the heir with the inheritance, because it is a fixture. There is, however, another sense in which the term fixtures is very frequently used, and which it is thought expedient to adopt in the following treatise, viz., as denoting those chattels which have been annexed to land and which may be afterwards severed and removed by the party who has annexed them, or his personal representative, against the will of owner of the freehold." (*Amos & F. 1.*) This definition has been judicially approved (*Hallen v. Runder*, 1 Crompt. M. & R. 266); but is nevertheless incorrect. (*See* 2 Sm. Lead. Cas. 182.)

Fixtures are things fixed to land—some are removable, some not. When we speak of a chattel passing to the heir because it is a fixture, we mean that it is an irremovable fixture; when we speak of a tenant's fixture, we mean that it is removable.

†Co. Litt. 53a; Chit. Cont. 327; *Amos & F. Fixt.* 9. "Whether a machine or other article has been so fixed and attached to the freehold as to become parcel of it, is a question of fact depending on the circumstances of each case, and principally on two circumstances: first, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them; whether it can easily be removed *intégrè, salvè et commodè*, or not, without injury to itself or the fabric of the building; secondly, or the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling . . . or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel." Woodf. Land. & T. 584.

time during his tenancy. Tenant's fixtures again are divisible according to their nature into (a) trade fixtures, being articles erected by the tenant solely for the purposes of trade or manufacture, such as engines, cisterns, plants and trees planted by nurserymen, &c., (Chit. Cont. 329, 332,) and (b) ornamental fixtures, or articles put up for domestic use or ornament, such as book-cases, marble chimney-pieces, &c. *Id.* 329, 331.

§ 4. **Agricultural fixtures**, or those erected by a tenant for agricultural purposes, are subject to special rules and statutory provisions, the general rule (in the absence of a special agreement) being that he is entitled to remove such fixtures, on giving notice to his landlord, unless the latter elects to purchase them.

§ 5. The cases, both English and American, upon the subject of fixtures, are so thoroughly in conflict that any attempt to reconcile them, or to draw from them any rules of general application as to what articles are or are not fixtures, as between heir and executor, landlord and tenant, or mortgagor and mortgagee, would be of more than doubtful success, and is certainly not within the scope of the present work. The cases, however, have been carefully examined for matters of definition, and the references given below will lead to the ascertainment of the rules which obtain in the different jurisdictions.

FIXTURES, (defined). 14 Cal. 59; 8 Iowa 544, 551; 3 Nev. 82; 66 N. Y. 489; 1 Ohio St. 511, 524; 30 Pa. St. 185, 189; 1 Chit. Gen. Pr. 161; 2 Steph. Com. 236.

— (what are). 9 Conn. 63; 18 Ind. 231; 21 Iowa 176; 10 Kan. 314; 8 Mass. 411; 4 Metc. (Mass.) 306; 3 Neb. 131; 7 Nev. 37; 41 N. H. 503; 11 Barb. (N. Y.) 43; 25 *Id.* 484; 35 *Id.* 58; 51 *Id.* 45; 4 Daly (N. Y.) 359; 1 Hill (N. Y.) 176; 2 *Id.* 142; 20 N. Y. 341; 22 Ohio St. 563; 17 Vt. 403, 409; Amb. 113; 3 Atk. 13, 15; 1 Barn. & Ad. 161; 2 Barn. & Ald. 165; 6 Bing. 437; 2 East 88; 4 Esp. 33; 1 McClell. 217; 1 P. Wms. 94; 1 Salk. 368, n.; 1 Chit. Gen. Pr. 94.

— (what are not). 5 Day (Conn.) 464, 467; 16 Ill. 421; 35 Ind. 387; 7 Mass. 432; 15 *Id.* 159; 4 Pick. (Mass.) 310; 8 Sm. & M. (Miss.) 444; 32 Mo. 206; 6 Nev. 244; 4 Abb. (N. Y.) App. Dec. 55; 10 Barb. (N. Y.) 157; 47 *Id.* 104; 7 Cow. (N. Y.) 319; 1 Den. (N. Y.) 91; 6 Johns. (N. Y.) 5; 20 *Id.* 29; 20 Wend. (N. Y.) 636; 17 Serg. & R. (Pa.) 413; 3 Watts (Pa.) 140; 2 R. I. 15; 3 McCord (S. C.) 553; 5 Wheel. Am. C. L. 422; 1 Atk. 477; 1 Barn. & Ad. 394; 2 Brod. & B. 54; 3 East 38; 3 Esp. 11; 1 Cro. 374;

2 Dowl. & Ry. 1; 4 Moo. 281, 288; Love. Wills 31.

FIXTURES, (tests to determine). 35 Conn. 88, 93; 42 Miss. 71, 732; 43 *Id.* 349; 9 C. E. Jr. (N. J.) 260; 10 Barb. (N. Y.) 496; 48 N. Y. 278; 62 Pa. St. 28; 2 Watts & S. (Pa.) 116; 28 Vt. 428; 26 Gratt. (Va.) 752.

— (between vendor and vendee of land). 6 Cow. (N. Y.) 665.

— (made by mortgagor). 12 N. Y. 170.

— (when included in mortgage). 2 E. D. Smith (N. Y.) 474; 3 Edw. (N. Y.) 246.

— (when pass by conveyance of the fee). 1 Bail. (S. C.) 540; 2 Barn. & C. 76.

— (when cannot be taken under a *fiert facias*). 5 Barn. & Ald. 625, 826.

— (when removable by the tenant). 2 Pet. (U. S.) 137; 9 Vr. (N. J.) 457; 1 Whart. (Pa.) 91; Harr. & W. 283; 5 Com. Dig. 559; 7 *Id.* 725.

— (in a declaration). 5 Mees. & W. 175.

— (included under "goods, chattels and effects" in a declaration). 4 Barn. & Ald. 206.

— (in an agreement). 1 Crompt. M. & R. 266.

FIXTURES AND FIXED FURNITURE, (in a will). 6 Car. & P. 658.

FLACO.—A place covered with standing water.

FLAG.—

§ 1. A national standard on which are certain emblems; an ensign; a banner. It is carried by soldiers, ships, &c., and commonly displayed at forts and many other suitable places. Each civilized nation has its own particular flag.

§ 2. **Of the United States**.—The act of congress of April 4th, 1818, (Rev. Stat. §§ 1791, 1792,) provides that the flag of the United States shall be thirteen horizontal stripes, alternate red and white; and that the union of the flag shall be thirty-seven (in the original act twenty) stars, white in a blue field; and that, on the admission of each new State into the union, one star shall be added to the union, such addition to take effect on the fourth day of July then next succeeding the admission of such new State.

FLAG CAPTAIN, (defined). 12 Mass. 173, 175.

FLAG, DUTY OF THE.—The act of saluting the British flag, formerly exacted as an acknowledgment of England's supremacy over the British seas. The custom has long fallen into disuse, and is not likely to be revived.

FLAGRANS.—Raging; burning; in actual perpetration. Thus, *flagrans bellum*, a war raging; *flagrans crimen*, a crime, the commission of which is going on or has just ceased.

FLAGRANT NECESSITY.—A case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

FLAGRANTE DELICTO.—In the very act of committing the crime. 4 Bl. Com. 307.

FLAT, (as applied to shallow water, defined). 34 Conn. 370, 376; *Id.* 421, 424.

FLATS, (in a deed). 8 Watts & S. (Pa.) 436, 442.

— (synonymous with "shore"). 6 Mass. 435, 439.

— (not synonymous with "swamp"). 2 Whart. (Pa.) 508, 538.

FLAVIANUM JUS.—A treatise containing the forms of actions in the Roman law, named after its author, Cneus Flavius.

FLECTA.—A feathered or fleet arrow.—*Cowell.*

FLEDWITE, or FLIGHTWITE.—A discharge from amercements, where a person having been a fugitive came to the peace of the king, of his own accord, or with license.

FLEEING FROM JUSTICE, (what is). 48 Mo. 240.

— (what is not). 4 Day (Conn.) 121.

— (in a statute). 3 Dill. (U. S.) 381; 19 Int. Rev. Rec. 18.

— (in United States constitution). 13 So. Car. 74.

FLEET.—(1) A place where the tide flows, a creek, or inlet of water, hence Northfleet, Purfleet; (2) a company of ships or navy; (3) a prison in London (so called from a river or ditch formerly in its vicinity), now abolished by 5 and 6 Vict. c. 22.

FLEET-BOOKS.—The books of the old Fleet prison are not, it is said, admissible in evidence to prove a marriage, for they are not made under public authority. But perhaps on a question of pedigree, they are evidence to show the name by which a woman passed when she was married there. These books are now deposited in the office of the registrar-general, pursuant to the Act of 3 and 4 Vict. c. 92, §§ 6, 20. They contain the original entries of marriages solemnized in the Fleet prison from 1686 to 1754. Tayl. Ev. § 1430.

FLEM.—An outlaw; a fugitive.

FLEMENE FRIT—FLEMENES FRINTHE—FLYMENA FRYNTHE.—The reception or relief of a fugitive or outlaw.—*Jacob.*

FLEMESWITE.—The possession of the goods of fugitives. *Fleta* lib. 1, cxlvii.

FLET.—House; home.—*Cowell.*

FLETA is the name given to a *Commentarius Juris Anglicani*, composed by an unknown writer during the reign of Edward I. The title is derived from the book having been written during the author's confinement in the Fleet prison. He appears to have derived his materials from Bracton and Glanville (*q. v.*)

FLETWIT, or FLITWIT.—*See* FLEDWITE.

FLICHWITE.—A fine on account of brawls and quarrels.—*Spel. Gloss.*

FLIGHT.—In criminal law, flight is the act of one under accusation, who evades the law by voluntarily withdrawing himself. It is presumptive evidence of guilt. *See* EXTRADITION; FUGITIVES FROM JUSTICE.

FLOAT.—In American land law, especially in the Western States, a certificate authorizing the entry, by the holder, of a certain quantity of land (*q. v.*) 20 How. (U. S.) 501, 504.

FLOATABLE STREAM, (defined). 2 Mich. 519.

FLOATING.—*See* SECURITY.

FLOATING DEBT, (defined). 71 N. Y. 371, 374.

— (in a statute). 23 Hun (N. Y.) 59.

FLODEMARK.—High-water mark; flood-mark.—*Blount.*

FLOOR.—

§ 1. In England, the floor of a court is that part between the judge's bench and the front row of counsel. Litigants appearing in person, in the High Court or Court of Appeal, are supposed to address the court from the floor.

§ 2. In parliamentary practice, that member of a public body in session whose right it is to speak, *i. e.* who has been recognized by the chairman, or other person presiding at the time, is said to "have the floor;" in other words, to be entitled to address the meeting in preference to any other member.

FLOOR, (in a policy of insurance). 10 Bosw. (N. Y.) 428.

FLOOR CLOTH CANVAS, (synonymous with "oil-cloth foundations"). 1 Otto (U. S.) 362.

FLORIN.—A coin originally made at Florence, now of the value of about two English shillings.

FLOTAGES.—(1) Such things as by accident swim on the top of great rivers or the sea.—*Cowell.* (2) A commission paid to water bailiffs.—*Can. Dict.*

FLOTSAM.—See **JETSAM**, **FLOTSAM** and **LIGAN**.

FLOTSAM, (defined). 1 Bl. Com. 292.
—— (distinguished from "jetsam" and "ligan"). 5 Co. 106.

FLOUDE-MARKE.—Same as **flood-mark** (*q. v.*)

FLOWING LANDS, (meaning of). 2 Gray (Mass.) 232, 235.

FLUCTUS.—Flood; flood-tide. Bract. 255.

FLUMEN.—(1) A river; (2) flood, flood-tide; (3) an easement giving the right of turning rain water upon the land of another.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est: Rivers and ports are public, therefore the right of fishing is common to all.

FLUVIUS.—A river; a public river; flood; flood-tide.

FLY FOR IT.—On a criminal trial in former times, it was usual, after a verdict of not guilty, to inquire also, "Did he fly for it?" This practice was abolished by the 7 and 8 Geo. IV. § 5.

FLYMA.—A runaway; fugitive; an outlaw; one escaped from justice, or who has no "hlaforð."—*Anc. Inst. Eng.*

FLYMAN-FRYMTH.—The offence of harboring a fugitive, the penalty attached to which was one of the rights of the crown.—*Anc. Inst. Eng.*

FOCAGE.—Housebote; firebote.—*Cowell.*

FOCALE.—Firewood.—*Cowell.*

FODDER.—(1) Food for horses or cattle; (2) among the Feudists, a prerogative of the prince to be provided with corn, &c., for his horses by his subjects in his wars.

FODDER FOR CATTLE, (in a statute). Wilberf. Stat. L. 237.

FODERTORIUM.—Provisions to be paid by custom to the royal purveyors.—*Cowell.*

FÆDUS.—A league or compact; a treaty.

FÆMINA VIRO CO-OPERTA.—A married woman.

Fœminæ non sunt capaces de publicis officiis (Jenk. Cent. 237): Women are not admissible to public offices. But a woman

may be elected to the office of sexton, (*Olive v. Ingram*, 7 Mod. 263,) or governor of a workhouse, and act by deputy, (*Anon.*, 2 Lord Raym. 1014,) or an overseer. (*Rex v. Stubbs*, 2 T. R. 395.) A woman is not, however, entitled to vote at elections for members of parliament. (*Charlton v. Lings*, L. R. 4 C. P. 374; 38 L. J. C. P. 25.) She may be elected to a school board constituted under the Elementary Education Act, 1870.

FÆNERATION.—The act of putting out money to usury.

FÆNUS NAUTICUM.—Maritime interest. A contract for the repayment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself, with a condition to be repaid with extraordinary interest. See **BOTTOMRY**; **RESPONDENTIA**.

FÆNUS NAUTICUM, (defined). 2 Bl. Com. 458.

FÆSA.—Grass; herbage. Mon. Ang. tom. 2, p. 506.

FÆTICIDE.—Criminal abortion. It may be said of all the means resorted to in order to effect this abominable crime, that they are uncertain in their operation upon the fœtus, that they always endanger the life of the mother, and that they sometimes destroy the mother without affecting the fœtus. See **ABORTION**; **INFANTICIDE**.

FÆTUS.—A babe in the womb.

FOGAGE.—Fog, or rank after-grass, not eaten in summer.—*Cowell.*

FOINESUN.—The fawning time of deer.—*Spel. Gloss.*

FOITERERS.—Vagabonds.—*Blount.*

FOLC-GEMOTE.—See **FOLC-MOTE**.

FOLC-LAND.—The land of the folk or people. It was the property of the community. It might be occupied in common or possessed in severalty; and, in the latter case, it was probably parcelled out to individuals in the *folc-gemote* or court of the district, and the grant sanctioned by the freemen who were there present. But, while it continued to be folc-land, it could not be alienated in perpetuity; and, therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. Spelman describes folc-land as *terra popularis quæ jure communi possidetur—sine scripto*. (*Gloss. v. Folc-land*). In another place he distinguishes it accurately from bocland: *Prædia Sæones duplici titulo possidebant, vel scripti auctoritate, quod bocland vocabant, vel populi testimonio, quod folc-land dixerent*. (*Id. v. Bocland*).—*Wharton*.

FOLC-MOTE, FOLC-GEMOTE, or FOLK-MOTE.—A general assembly of the people to consider of and order matters concerning the commonwealth; also any kind of popular or public meeting.—*Spel. Gloss.; Termes de la Ley.*

FOLC-RIGHT, or FOLK-RIGHT.—The *jus commune*, or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law or justice to be due to persons of all degrees.

FOLDAGE.—

§ 1. A privilege possessed in some places by the lord of a manor, and consists in the right of having his tenant's sheep to feed on his fields, so as to manure the land, in return for which the lord provides a field for the sheep. It is a seigniorial right (*q. v.*)

§ 2. The name of foldage is also given in parts of Norfolk to the customary fee paid to the lord for exemption at certain times from this duty. *Elt. Com.* 45, 46.

FOLDCOURSE.—This word means (1) in its proper sense, the right which the lords of some manors have of feeding a certain number of sheep on the lands of their tenants during certain times of the year. (*Elt. Com.* 44.) It seems that such a right is not strictly a right of common, although frequently so called, (2 *Wms. Saund.* 727; *Spooner v. Day*, *Cro. Car.* 432,) but a seigniorial right reserved by the lord of the manor over his tenant's lands. (*Elt. Com.* 45.) "Foldcourse" also means (2) land subject to a right of foldcourse, or the same thing as a sheepwalk (*q. v.*) (*Co. Litt.* 6a, *n.* (1)); and (3) the right of a tenant of a manor to pasture sheep on the land of the lord; such a right is a common appurtenant. *Robinson v. Duleep Singh*, 11 *Ch. D.* 798. See FOLDAGE; COMMON, §§ 4-10.

FOLGARII.—Menial servants; followers.—*Bract.*

FOLGERE.—A freeman, who has no house or dwelling of his own, but is the follower or retainer of another (*heorthfæst*), for whom he performs certain predial services.—*Anc. Inst. Eng.*

FOLGOTH.—Official dignity.

FOLIO (abbreviated *fol.*).—(1) A certain number of words; in conveyances, &c., amounting in England, to seventy-two, and in parliamentary proceedings to ninety. In most of the States a folio is one hundred words, counting figures as words, but formerly it was seventy-two in New York (2 *Rev. L.* 1813, 15); (2) in printing, the figure at the top or bottom of a page; (3) the largest size of a book. Most of the old black-letter books are folios.

FOLIO, (is one hundred words). 38 *Mich.* 639, 640.

FOLK-LAND.—See FOLC-LAND.

FOLLOWING, PRECEDING, (in a statute). 15 *Ind.* 112.

FOOD AND RAIMENT, (in a will). 2 *Dana* (Ky.) 384, 385.

FOOT OF A FINE.—See FINE, § 9.

FOOTGELD.—An amercement for not expediting or cutting out the balls of dogs' feet in the forest. *Manw. pt. i.* p. 86.

FOR, (as meaning "in front of," "in place of"). 37 *Wis.* 265, 268.

— (as meaning "on account of," "by reason of," "because of," &c.) 31 *N. Y.* 103.

— (in an agreement). 12 *Mod.* 455, 462.

— (in contracts, imports condition precedent). *Hob.* 41; 5 *Mau. & Sel.* 187.

— (when inserted in statute by judicial construction). 25 *Minn.* 522.

FOR AND IN CONSIDERATION OF, (in a deed). 7 *Vt.* 522.

FOR AND ON ACCOUNT OF, (in a declaration). 2 *Dowl. & L.* 410.

— (in a plea). 6 *Dowl. & L.* 149.

FOR AND ON THE PART AND BEHALF OF, (in a bond). 5 *East* 148.

FOR CAUSE, (in city charter concerning removal of officer). 19 *Hun* (N. Y.) 441, 448.

FOR COLLECTION, (in a receipt). 8 *Allen* (Mass.) 189, 192.

— (in indorsement of note). 21 *Minn.* 385; 23 *Id.* 263.

FOR DEFAULT OF SUCH ISSUE, (in a will). *L. R.* 7 *Ex.* 339; 8 *Id.* 160.

FOR HER OWN USE, (in a deed). 1 *Desaus.* (S. C.) 348.

FOR HER OWN USE AND AT HER OWN DISPOSAL, (in a will). 1 *Chit. Gen. Pr.* 61.

FOR HER OWN USE AND BENEFIT, (in a will). 5 *Madd.* 491; 2 *Chit. Gen. Pr.* 20 (App.)

FOR HIMSELF, (in an agreement). 4 *T. R.* 761, 765.

FOR THE PURPOSE OF SALE, (equivalent to "with the intent to sell"). 97 *Mass.* 567, 570.

FOR THE USE OF SAID COMPANY, (in a deed). 107 *Mass.* 290, 324.

FOR THAT—FOR THAT WHEREAS.—Introductory words in pleading. See *Hamm. N. P.* 9.

FOR THAT WHEREAS, (in a declaration). 2 *Mass.* 358; 4 *Wheel. Am. C. L.* 205.

FOR THE BENEFIT OF HIS WIFE AND CHILDREN, (in life policy). 66 *Me.* 517; 22 *Am. Rep.* 588.

FOR THE FUTURE, (in a decree). 14 *Ves.* 324, 339.

FOR THE LAND, (in a covenant). 15 *Mass.* 500, 503.

FOR THE TIME BEING, (in a charter). 2 *Dowl. & Ry.* 761, 770; 4 *East* 17, 26.

FOR VALUE RECEIVED, (in a deed). 18 *Johns.* (N. Y.) 60.

— (in a promissory note). 5 *Barn. & C.* 501; 8 *Dowl. & Ry.* 163.

FOR WHOM IT MAY CONCERN.—A general clause inserted in policies of marine and fire insurance, in order to cover the insurable interests of persons other than the party named as the insured. 1 Phill. Ins. 152.

FOR WHOM IT MAY CONCERN, (in a policy of insurance). 1 Pet. (U. S.) 151, 160; 2 Mass. 1, 12; 16 Am. Dec. 323 n.

FORAGE.—Hay and straw for horses, particularly in the army.—*Jacob*.

FORAGIUM.—Straw when the corn is threshed out.—*Cowell*.

FORATHE.—In forest law, one who could make oath, i. e. bear witness for another.—*Cowell*; *Spel. Gloss*.

FORBALKA.—In old records, a balk or ridge of land lying forward or next to the highway.

FORBANNITUS.—A pirate; an outlaw.

FORBARRE.—To deprive one of a thing forever.—*Cowell*.

FORBATUDUS.—The aggressor slain in combat.—*Jacob*.

FORBEAR, (agreement to, when a good consideration). 6 Conn. 81; 2 Root (Conn.) 138; 2 Binn. (Pa.) 506; 1 Cro. 455; 1 Ld. Raym. 368.

FORBEAR AND GIVE DAY OF PAYMENT, (in a declaration). 4 East 455.

FORBEARANCE.—Abstaining from, or delaying the enforcement of a right; indulgence of a debtor by his creditor. Forbearance is a good consideration to support a simple contract, provided that (like other considerations) it move from the plaintiff at the request of the defendant. In general jurisprudence, "forbearance" is commonly used in contradistinction to "act."

FORBEARANCE, (defined). Minor (Ala.) 209, 232.

— (when a good consideration to support a contract). 2 Bibb (Ky.) 25, 30; 4 Greenl. (Me.) 387; 4 Johns. (N. Y.) 237; 5 Rawle (Pa.) 69; 3 Watts (Pa.) 213; 2 Wheel. Am. C. L. 209; 3 Id. 356; Cro. Jac. 47, 273, 396, 683; 1 Rol. Abr. 23.

— (how pleaded). Cro. Jac. 110.

— (in a declaration). 7 Conn. 523.

— (in usury act). 3 N. Y. 344, 355.

FORCE.—

§ 1. Unlawful violence. It is either *simple*, as entering upon another's possession, without doing any other unlawful act; *compound*, when some other violence

is committed, which of itself alone is criminal; or *implied*, as in every trespass, rescous, or disseisin. All force is contrary to law. It is, therefore, lawful to repel force by force; *quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum est*: That which is otherwise good and just, if it be obtained by force or fraud, is bad and unjust. 3 Co. 78.

§ 2. Validity; binding effect. Thus, we say a law is "in force" when it is not repealed and can be enforced.

FORCE, (defined). 39 Me. 322, 324; 18 Am. Dec. 141 n.

— (injuries by). 3 Steph. Com. 364.

FORCE AND ARMS.—LATIN: *vi et armis*.

Words usually inserted in an indictment, though not absolutely necessary. They were also formerly inserted in every declaration for trespass, but are now unnecessary.

FORCE AND FEAR, called also "*vi metueque*," means that any contract or act extorted under the pressure of force (*vis*) or under the influence of fear (*metus*), is voidable on that ground, provided, of course, that the force or the fear was such as influenced the party.—*Brown*.

FORCE, COMPEL AND, (in an indictment). 1 Car. & P. 301.

FORCE OF LAWS AND ACTS AFORESAID, (in a declaration). 9 Pick. (Mass.) 162.

FORCE OF THE STATUTE, (in a declaration). 5 Pick. (Mass.) 168.

FORCE MAJEURE.—In insurance law. irresistible force.

FORCED HEIRS.—A term used in Louisiana to denote those persons whom the testator or donor cannot deprive of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them. (La. Civ. Code, Art. 1482.)—*Bouvier*.

FORCED SALE, (defined). 15 Fla. 336; 6 Tex. 110.

— (not synonymous with "sale on execution"). 33 Cal. 266, 276.

FORCES.—The military and naval services of the country.

FORCHEAPUM.—Pre-emption, fore-stalling the market.—*Jacob*.

FORCIBLE DETAINER.—The offence committed by a person, who, having wrongfully entered upon any lands or

tenements, detains them with violence or threats, *i. e.* in the same manner as would render an entry upon them for the purpose of taking possession a forcible entry (*q. v.*) Steph. Cr. Dig. 47; 1 Russ. Cr. 410.

FORCIBLE DETAINER, (defined). 4 Com. Dig. 355.

FORCIBLE ENTRY.—The offence of entering upon any lands or tenements in a violent manner in order to take possession thereof, whether the violence consists in actual force applied to any other person, or in threats, or in breaking open any house, or in collecting together an unusual number of persons for the purpose of making such entry. In England, forcible entry is a misdemeanor, (Steph. Cr. Dig. 46; 1 Russ. Cr. 404 *et seq.*; Lows v. Telford, 1 App. Cas. 414;) a summary remedy by justices of the peace is also available. (Woodf. Land. & T. 795.) In the United States a civil remedy for obtaining restitution of the lands, is provided by the statutes of the several States, and the offence is also punishable criminally.

FORCIBLE ENTRY, (defined). 5 Cal. 156, 157; 4 Com. Dig. 352.

— (what is). 1 Ashm. (Pa.) 140; 18 Am. Dec. 138, 139, *n.*, 140, *n.*, 144, 146, *n.*, 147, *n.*, 663; 5 Wheel. Am. C. L. 428.

— (how committed). 38 Cal. 676.

FORCIBLE ENTRY AND DETAINER, (what is). 2 Car. & P. 17; 9 Cal. 46; 2 Greene (Iowa) 201; 10 Mass. 403; 6 Halst. (N. J.) 313; 7 *Id.* 186, 226.

FORCIBLY, (in a statute). 2 Gall. (U. S.) 15, 19.

FORCIBLY BROKE AND ENTERED, (in a statute). 115 Mass. 561.

FORCIBLY RAVISHING, (in a statute). 50 Barb. (N. Y.) 128, 131.

FORECLOSURE, (in a promissory note). 7 Allen (Mass.) 80, 85.

FORECLOSURE DECREE, (effect of). 9 Cow. (N. Y.) 346.

FORDA.—A ford or shallow in a river.—*Cowell.*

FORDAL.—A butt or headland, jutting out upon other land.—*Cowell.*

FORDANNO.—A first assailant.—*Spel. Gloss.*

FORECHEAPUM.—*See* FORCHEAPUM.

FORECLOSE—FORECLOSURE.—

§ 1. In England, and in a few of the States, when a mortgagor has failed to pay off the mortgage debt within the proper

time, the mortgagee is entitled to bring an action asking that a day may be fixed on which the mortgagor is to pay off the debt, and that in default of payment on that day, he (the mortgagor) may be foreclosed of his equity of redemption, *i. e.* deprived or debarred of his right to redeem. The judgment fixes a place and time for payment, generally six months from the date of the judgment, (*Cox v. Watson*, 7 Ch. D. 196,) and orders that the mortgagor be foreclosed if the debt is not paid on that day; but the time is often extended. This is called a "strict" foreclosure, and the effect of it is to bar the mortgagor's right or equity of redemption, and thus to vest the property absolutely in the mortgagee; and he cannot subsequently sue the mortgagor for any deficiency of value, unless he gives the mortgagor a new right of redemption. (*Fish. Mort.* 1057.) But even after an order of foreclosure absolute the court has a discretion to re-open the foreclosure within a reasonable time and allow the mortgagor to redeem. (*Campbell v. Holyland*, 7 Ch. D. 166.) Foreclosure actions are now comparatively rare in English practice, as the mortgagee's remedy by sale, under the power of sale usually conferred on him, is in general more speedy and convenient. As to the derivation of the word, compare FORJUDGE. *See* DAY TO SHOW CAUSE; JUDGMENT; MORTGAGE; POWER.

§ 2. In most of the States the prevalent method of foreclosure is by a bill in equity, or equitable action, by the mortgagee praying for a sale of the mortgaged premises under the direction of an officer of the court, and the application of the proceeds to satisfy the mortgage and other incumbrances, if any, according to their priority. When such a sale is completed by the deed of the officer, the mortgagor's title passes to the purchaser, and the court under whose decree the sale was made will enforce it, by compelling the mortgagor to surrender the possession to the purchaser, (*see* WRIT OF POSSESSION,) whereas, after a decree for a strict foreclosure, a mortgagee who is out of possession is obliged to resort to ejectment to recover the possession.

§ 3. For other statutory methods of foreclosure provided by law in the several

States, *see* 2 Washb. Real Prop. 261 n., and consult the statutes of any particular State.

FOREFAULT.—In the Scotch law, to forfeit; to lose.

FOREGIFT.—A premium for a lease.

FOREGOERS.—Royal purveyors. 26 Edw. III. c. 5.

FORE-HAND RENTS, or FINES.—A species of rent, the payment of which is generally stipulated for by a covenant in the lease. It is sometimes called a "fore-gift," or "income," but more commonly a "fine." It is a premium given by a lessee at the time of taking his lease, and has been considered as an improved rent. Woodf. Land. & T. (10 edit.) 336-339.

FOREIGN.—LATIN: *foras*, out of; LOW-LATIN: *foraneus*; NORMAN-FRENCH: *foreyn*. (Littre v. Forain; 1 Diez. 192.) "Foreign," translated *forinsecus* by our early law writers, *e. g.* *servitia forinseca*, &c., Bract. 36a.

In law, (1) that which is strange, extrinsic, or irrelevant; (2) that which is out of a certain State, country, county, liberty, manor, jurisdiction, &c. "Foreign matter triable in another county." (Pl. Cor. 154; Kitch. Courts 126.) "Foreign plea is a refusal of the judge as incompetent, because the matter in hand is not within his precincts," *i. e.* jurisdiction. (Kitch. 75; *Termes de la Ley*, s. v.; Britt. 22b.) Thus, in the law of divorce, "foreign" means anywhere out of the country or State, and "foreigner" means one who is not domiciled in the country. (Yelverton v. Yelverton, 1 Swab. & T. 586.) As to foreign law, *see* FACT, § 2. As to foreign judgments, *see* JUDGMENT. As to foreign services, *see* SERVICE. As to foreign bills of exchange, *see* BILL OF EXCHANGE, § 9. *See, also*, DENIZEN; FOREIGN ATTACHMENT; FORFEITURE; STATE.

FOREIGN ANSWER.—In old English practice, an answer which was not triable in the county where it was made. (Stat. 15 Hen. VI. c. 5.)—Blount.

FOREIGN APPOSER.—*See* APPOSER.

FOREIGN ASSIGNMENT.—An assignment made in a foreign country, or in another State. 2 Kent Com. 405 *et seq.*

FOREIGN ATTACHMENT.—

§ 1. **Etymology and history.**—The citizens of London had a prompt remedy by arrest against all persons within the city, whether they were citizens or foreigners, ("foreigners from

the liberties of the city," *i. e.* persons not citizens,) but they had no personal control over foreigners out of the city, and it was to compel such persons to appear and find bail that the process of attachment was first used, hence it was called "attachment of foreigners' goods," or "foreign attachment." Brand. For. Att. 4.

§ 2. **In English law.**—By the custom of the city of London and the cities of Bristol, Exeter and Lancaster, (Brand. For. Att. 1; *see Termes de la Ley*, s. v. Foreign,) if an action of debt is brought in the Mayor's Court, and the defendant makes default in appearing to the action, and it appears that he has nothing within the city whereby he may be summoned, the court may, on the plaintiff alleging that some person within the city has property belonging to the defendant in his possession, attach the property to compel the defendant to appear. The attachment is effected by warning the person in whose possession the property is, not to part with it without the further order of the court. This person is then called the garnishee. If the defendant still makes default in appearing, the garnishee is required to show cause why the plaintiff should not have execution of the property attached, and, in default of cause being shown, the plaintiff obtains execution, first giving security to restore the property to the defendant if he should, within a year and a day, come into court and disprove the debt alleged in the action. (*See* PLEDGES TO RESTORE; SCIRE FACIAS.) What the plaintiff receives by the execution operates as a satisfaction (wholly or *pro tanto*) of the debt due to him from the defendant.

§ 3. Where the property attached is money belonging to the defendant, the judgment is final, but in the case of goods the judgment is interlocutory, and is called judgment of appraisement because it directs the goods to be appraised (*i. e.* valued) by the serjeant at mace, in order that the defendant may be credited with their value, and when this is done final judgment is signed and execution issued. Brand. For. Att. 91.

§ 4. Theoretically, the primary object of the process of foreign attachment is to compel the defendant to appear, and, therefore, if the defendant appears according to the custom, as by giving bail, paying money into court, &c., (*see* APPEARANCE,) the attachment is dissolved or at an end. In practice, however, the proceeding by foreign attachment is used principally for the purpose of taking the defendant's property in satisfaction of the debt. Hence, it has become usual to make the record in a proceeding by foreign attachment recite a number of steps which are purely fictitious, *e. g.* a return by the sheriff that the defendant has nothing within the city whereby he may be summoned, a "solemn calling" of the defendant, his default, &c., &c. "All this is recited in the record as occurring at one and the same court. No specific time is necessary to elapse, but immediately the action is entered and the plaintiff makes a satisfactory affidavit of his debt, he is at liberty to issue the attachment" (*Id.* 9), which is a command of the court to the sheriff to attach the property. The sheriff accordingly serves on the garnishee an "attachment paper," or notice not to part with the property. After the fictitious

"solemn calling" of the defendant and his four successive defaults, (for, as the proceedings to obtain execution are founded on the defendant's supposed default in appearing, it is necessary to allege his default, although it has not actually taken place,) a *scire facias* is issued to warn the garnishee to appear and show cause why the plaintiff should not have execution of the property attached, and if no cause is shown, or if cause is shown but judgment is given for the plaintiff, he obtains execution of the property. (See, as to the custom generally, Brand. For. Att.; Turbill's Case, 1 Wms. Saund. 87; Mayor of London v. Cox, L. R. 2 H. L. 239.) In a recent case, (London Joint Stock Bank v. Mayor of London, 5 C. P. D. 494. See, also, Mayor of London v. London Joint Stock Bank, 6 App. Cas. 393,) however, where it appeared that the usual practice of inserting fictitious statements in the record had been followed, the court held that the custom had not been followed, and restrained the proceedings in the Mayor's Court. It seems probable that this decision will considerably diminish the use made of the anomalous proceeding in question.

§ 5. As to foreign attachment in American law, see ATTACHMENT, § 2.

FOREIGN BILL OF EXCHANGE.—One which is either drawn abroad or payable abroad, or both. It is commonly drawn in parts, and is made payable, in England, after a usance or usances, and not after so many days, weeks, or months. Scotland, Ireland and the Isle of Man, and the Channel Islands are deemed to be within the kingdom and not abroad. (19 and 20 Vict. c. 97, § 7.) In America, a bill drawn in one State and payable in another is a foreign bill (2 Pet. (U. S.) 586), as well as one drawn without the United States, or drawn within, on some person residing without the United States.

FOREIGN BILL OF EXCHANGE, (what is). 10 Pet. (U. S.) 572; 12 *Id.* 54; 6 Mass. 157; 12 Pick. (Mass.) 483; 15 Wend. (N. Y.) 527; 20 *Id.* 81; 1 Const. (S. C.) 100; 1 Hill (S. C.) 44; 4 Leigh (Va.) 37; 2 Wheel. Am. C. L. 182.

— (what is not). 19 Johns. (N. Y.) 378. **FOREIGN BILLS**, (note payable in). 4 Mass. 245; 6 *Id.* 188.

FOREIGN BOUGHT AND SOLD.—A custom in London, which, being found prejudicial to sellers of cattle in Smithfield, was abolished.—*Jacob*.

FOREIGN COINS.—Coins issued as money under the authority of a foreign government. As to their valuation in the United States, see U. S. Rev. Stat., §§ 3564, 3565.

FOREIGN COMMERCE, or TRADE.—Commerce between the United States and foreign countries. Sometimes, however, this phrase is used respecting commerce between ports of two sister States not lying on the same coast, *e. g.* New York and San Francisco. See COASTING TRADE.

FOREIGN COMMERCE, (defined). 14 How (U. S.) 568, 573.

FOREIGN CORPORATION.—A corporation created by, or under the laws of another State, government or country. In the State or country of its creation, it is a "domestic," in all other States or countries in which it resides or does business, a "foreign" corporation.

FOREIGN CORPORATION, (what is). 3 Abb. (N. Y.) Pr. N. s. 339; 50 Barb. (N. Y.) 339.

— (in a statute). 12 Ohio St. 139.

— (in attachment act). 34 How. (N. Y.) Pr. 408.

FOREIGN COUNTRY, (what is). 4 Wheat. (U. S.) 246.

FOREIGN COUNTY.—Another county, even in the same kingdom or State.

FOREIGN COURTS.—The courts of a foreign country, or of a sister State. The proceedings of a foreign court are proved by copies under the seal of such court, proof being given that the seal affixed is the seal of such court. If a court have no seal, then proof by an exemplification under the hand of the chief judge of the court (his handwriting being proved) will generally be received. The law of a foreign country must be proved by experts, and not by the mere production of some authenticated copy. As to who are experts for this purpose, see Tayl. Ev., § 1281.

FOREIGN DECREE.—See FOREIGN JUDGMENT.

FOREIGN DIVORCE.—One which is obtained in a State or country other than that in which the marriage took place or was solemnized.

FOREIGN DOMICILE.—See DOMICILE.

FOREIGN ENLISTMENT ACT.—An act of the English parliament, passed in 1870, repealing Stat. 59 Geo. III. c. 69, and

making it an offence, punishable with fine and imprisonment, for any British subject, without the license of the crown, to accept a commission in the military or naval service of any foreign State at peace with England, or to build or equip any ship for the service of any foreign State at war with a State at peace with England, or to assist in increasing her armament or warlike force. (As to the "Three Rules" established by the Treaty of Washington, 1871, and the principles decided by the Geneva Arbitration, *see* 3 Phillim. Int. L. 251 *et seq.*) There are similar laws in the United States, called the "neutrality laws."

FOREIGN FACTOR.—A factor who resides in a country foreign to that where his principal resides.

FOREIGN FISHING, (in revenue laws). 2 Sumn. (U. S.) 336.

FOREIGN-GOING SHIP.—By the English Merchant Shipping Act, 1854, (17 and 18 Vict. c. 104.) § 2, any ship employed in trading, going between some place or places in the United Kingdom and some place or places situate beyond the following limits: that is to say, the coasts of the United Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe, between the river Elbe and Brest inclusive. Home-trade ship includes every ship employed in trading and going between places within the last mentioned limits.

FOREIGN JUDGMENT OR DECREE.—One pronounced by a tribunal of a foreign country, or of a sister State. Such a judgment must be properly authenticated before it can be admitted in evidence.

FOREIGN JUDGMENT, (is a simple contract debt). 5 Johns. (N. Y.) 132; 11 *Id.* 168.

— (when an action will not lie on). 3 Com. Dig. 340.

FOREIGN JURISDICTION.—The exercise by a national government of the powers and jurisdiction acquired by it (whether by treaty, grant, usage, sufferance or otherwise,) in countries out of the dominions of such government.

FOREIGN JURY.—A jury obtained from a county other than that in which issue was joined.

FOREIGN KINGDOM, (defined). 19 Johns. (N. Y.) 377.

FOREIGN LANGUAGE, (will made in). 1 P. Wms. 526.

FOREIGN LANGUAGE, (words spoken in, how pleaded). 8 Wheel. Am. C. L. 122.

— (words spoken in, when actionable). 3 Wend. (N. Y.) 394; Cro. Eliz. 496, 865.

FOREIGN LAWS.—The laws of a foreign country, or of a sister State. Foreign laws are often the suggesting occasions of changes in, or additions to, our own laws, and in that respect are called *jus receptum*.

FOREIGN LAWS, (what are). 6 Conn. 480; 9 Pick. (Mass.) 112.

— (how pleaded). 6 Conn. 480.

— (how proved). 2 Cranch (U. S.) 187, 236; 3 Pick. (Mass.) 293.

— (when judicially noticed). 1 Cranch (U. S.) 1, 38.

— (when not judicially noticed). 3 Wend. (N. Y.) 269; 10 *Id.* 75.

FOREIGN MARKETS, (in a statute). 11 Serg. & R. (Pa.) 90.

FOREIGN MATTER.—Matter done or triable in another county.—*Blount; Cowell*.

FOREIGN NATION, (what is). 4 Conn. 517.

FOREIGN OFFICE.—The department of State through which the English sovereign communicates with foreign powers; a Secretary of State is at its head; till the middle of the last century, the functions of a Secretary of State as to foreign and home questions were not disunited.

FOREIGN PLEA.—A plea objecting to the jurisdiction of a judge, on the ground that he had not cognizance of the subject-matter of the suit.—*Cowell*.

FOREIGN PORT, (defined). 19 Johns. (N. Y.) 375.

— (what is). 1 Abb. (U. S.) 191; 1 Cliff. (U. S.) 308; 4 Dill. (U. S.) 439, 444; 2 Low. (U. S.) 555; 10 Wall. (U. S.) 192, 200; 1 Hall (N. Y.) 430.

— (what is not). 2 Abb. (U. S.) 172.

— (in a statute). 19 Johns. (N. Y.) 57; 17 Wend. (N. Y.) 328.

FOREIGN PORT OR PLACE, (in a statute). 2 Gall. (U. S.) 4; 4 Halst. (N. J.) 59, 63.

FOREIGN SERVICE, in feudal law, was that whereby a mesne lord held of another, without the compass of his own fee, or that which the tenant performed either to his own lord or to the lord paramount out of the fee. (Kitch. 299.) Foreign service seems also to be used for knight's-service, or escuage uncertain. (Perk. 650.)—*Jacob*.

FOREIGN STATE.—(1) A foreign country or nation. (2) A sister State; each of the United States being considered foreign to each other with respect to matters regulated by their several systems of municipal law.

FOREIGN STATE, (what is). 4 McCord (S. C.) 503.

— (in United States constitution). 5 Pet. (U. S.) 1.

FOREIGN TRADE, (distinguished from "coastwise trade"). 1 Holmes (U. S.) 421.

FOREIGN VESSEL.—A vessel owned by residents in, or sailing under the flag of, a foreign nation.

FOREIGN VESSEL, (what is not). Crabbe (U. S.) 271.

FOREIGN VOYAGE.—A voyage which terminates in some port or place within a foreign nation. 3 Kent Com. 177 n.; 1 Story (U. S.) 1.

FOREIGNERS.—(1) In old English law, persons not inhabitants of a city; (2) in modern law, aliens. They are amenable to our laws whilst residing amongst us, and it is no defence for a foreigner charged with a crime committed in England, that he did not know he was doing wrong, the act not being criminal in his own country. (*R. v. Esop*, 7 Car. & P. 456.) Nor would such a defence avail in America. As to naturalization, and the right of aliens, see **ALIEN**; **CITIZEN**; **DENIZATION**; **NATURALIZATION**.

FOREIGNERS, (citizens of other States are not). 1 Root (Conn.) 408; 15 Mass. 354.

— (in a statute). 1 Pet. (U. S.) 343, 349.

FOREJUDGE — FOREJUDGER. — See **FORJUDGE**.

FOREMAN.—The presiding member of a grand or petit jury.

FORENSIC.—Belonging to courts of justice.

FORENSIC MEDICINE, or medical jurisprudence, as it is also called, is "that science which teaches the application of every branch of medical knowledge to the purposes of the law; hence its limits are, on the one hand, the requirements of the law, and, on the other, the whole range of medicine. Anatomy, physiology, medicine, surgery, chemistry, physics and botany, lend their aid as necessity arises; and in some cases all these branches of science are required to enable a court of law to arrive at a proper conclusion on a contested question affecting life or property." *Tayl. Med. Jur.* 1.

§ 2. Forensic medicine is occasionally

required in cases of a civil nature, such as questions of lunacy or unsoundness of mind, (see **DELUSIONS**; **LUNACY**), or cases of nuisances injurious to health. Its most important function, however, is in criminal trials, where the evidence of a medical expert is frequently required. Thus, in a trial for murder, where the evidence is circumstantial, it is almost invariably necessary to adduce evidence by a medical practitioner as to the appearance of the body and the results of a *post-mortem* examination. So far as he attempts to account for the symptoms or appearances observed by him, his evidence is merely opinion evidence. See *Best Ev.* 651 *et seq.*

FORESAID.—In the Scotch law, *aforesaid*.

FORESCHOKE.—Forsaken, disavowed. 10 Edw. II. c. 1.

FORESHORE.—That part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides, *i. e.* by the medium line between the greatest and least range of tide (spring tides and neap tides). In England it forms part of the adjoining county, the justices of which have cognizance of offences committed there, whether it is or is not at the time covered with water. It also forms part of the adjoining parish. *Couls. & F. Waters* 13; *Stat.* 31 and 32 *Vict. c.* 122, § 27.

§ 2. The property in the foreshore is *prima facie* vested in the crown, but a part of it may belong to a subject by an ancient grant from the crown, or by prescription. This ownership of the crown is for the benefit of the community, and cannot be used in any way so as to derogate from or interfere with the public rights of navigation and fishery. *Couls. & F. Waters* 13; *A. G. v. Tomline*, 12 Ch. D. 214. See **ALLUVION**; **DERELICTION**.

FOREST.—In the legal sense of the word, "forest" is the exclusive right of keeping and hunting wild beasts and fowls of forest, chase, park, and warren, in a certain territory of "woody grounds and fruitful pastures," with laws and officers of its own, established for the protection of the game. These laws are now obsolete. 2 Bl. Com. 38; 1 Steph. Com. 665; *Manw. Forest*; 4 Inst. 288; *Co. Litt.* 233 a.

§ 2. A royal forest is one belonging to the crown (see **DEMESNE**, § 5); a forest in the hands of a subject is a franchise (*q. v.*)

§ 3. Forests, chases, parks, and warrens have this peculiarity, that they give their owners a qualified property or ownership in the animals confined in them, so that no other person can

acquire a property in them either by taking them within the forest &c., or by chasing them thence and taking them in other ground. See ANIMAL, § 2; CHASE; GAME; PARK; PUR-LIEU; WARREN.

FOREST, defined). 1 Steph. Com. 684.

— (what is). 1 Bl. Com. 289.

— (in a grant by the king). Dyer 159 b.

FOREST COURTS.—These courts are fallen into absolute desuetude. They were instituted for the government of the royal forests in different parts of England, and for the punishment of all injuries done to the deer or venison, to the vert or greensward, and to the covert in which such deer were lodged. They consisted of the Courts of Attachments, Regard, Sweinmote and Justice-seat. The Court of Attachments, Woodmote, or Forty Days' Court, was held before the verderors of the forest once in every forty days, to inquire into all offences against vert and venison. The Court of Reward, or survey of dogs, held every third year, for the expeditation of mastiffs. The Court of Sweinmote was held before the verderors thrice in every year, the swains or freeholders within the forest composing the jury. It inquired into the oppressions and grievances committed by the officers of the forest, and tried presentments certified from the Court of Attachments against offences in vert and venison. The Court of Justice-seat was held before the chief justice in eyre, or chief itinerant judge, or his deputy, to hear and determine all trespasses within the forest, and all claims of franchise, liberties and privileges, and all pleas and causes whatsoever therein arising. This was a court of record, but since the Revolution, in 1688, the forest laws have fallen into total disuse. (3 Steph. Com. (7 edit.) 317 n.)—*Wharton*.

FOREST LAW.—This was a particular system or body of laws relating to the forests of the crown. It is popularly associated with everything that was cruel, an opinion to which the frequency of that kind of statute called *carta di foresta* seems to give some probability. The officers of the forest, who were charged to preserve the vert and venison thereof, were called "foresters."—*Brown*.

FORESTAGIUM.—A duty or tribute payable to the king's foresters.—*Cowell*.

FORESTALL—FORESTALLING—FORESTALLMENT.—

§ 1. **Entry on land.**—To forestall a person is to obstruct his way with force and arms. To prevent a person from going on land to demand or distrain for rent in arrear by forestalling him operated as a disseisin of the rent. (Litt. § 240; Co. Litt. 161 b. See DISSEISIN.) The term is now obsolete.

§ 2. **Merchandise.**—This term is also used to signify the offence of raising the price of certain goods, by buying merchan-

dise on its way to market, or dissuading persons from bringing their goods there, &c. It was abolished in England by Stat. 7 and 8 Vict. c. 24. 4 Steph.-Com. 266 n. (p). See ENGROSSING, § 3.

FORESTALLER.—One who commits the offence of forestalling.

FORESTALLING, (what is). 4 Bac. Abr. 335

FORESTARIUS.—A forester.

FORESTER.—See FOREST LAW.

FORETHOUGHT FELONY.—In the Scotch law, murder committed in consequence of a previous design.—*Beil Dict.*

FOREVER, (in a deed). 4 Mass. 266; 6 Halst. (N. J.) 262, 266; 2 Pres. Est. 65.

— (in a statute). 5 Iowa 1.

— (in a will). 4 Halst. (N. J.) 10; 3 Binn. (Pa.) 374, 390; 4 Wheel. Ar. C. L. 382, 401; 12 Ves. 215, 233; 1 Bro. Ch. 147; 1 Chit. Gen. Pr. 248; Co. Litt. 9 b; Love. Wills 154, 262; 2 Pres. Est. 3, 74, 78; 8 Vin. Abr. 206, pl. 6.

— (not equivalent to "heirs and assigns"). 107 Mass. 591, 593.

— (synonymous with "permanently").

1 La. Ann. 315.

FOREVER, HIM AND HIS ASSIGNS, (in a grant. 2 Wend. (N. Y.) 492.

FORFANG, or FORFENG.—The taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign.—*Cowell*. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of it; also the reward fixed for such rescue.—*Wharton*.

FORFEIT.—To forfeit is to lose a thing by reason of misconduct, negligence or crime. The verb also includes "to confiscate," the two words "forfeited" and "confiscated" being often used as synonymous terms. As a noun "forfeit" means something lost by the doing or omission of a certain act.

FORFEIT, (in an agreement). 1 Woods (U. S.) 302; 15 Abb. (N. Y.) Pr. 273; 12 Barb. (N. Y.) 366, 375.

— (in merchant shipping act). 2 P. D. 218, 219.

FORFEIT AND PAY, (as used in a statute). 14 Bush (Ky.) 625.

— (in an agreement). 7 Wheat. (U. S.) 13, 18.

FORFEITED, (in a statute.) 5 Barn. & Ald. 441, 439.

FORFEITURE.—

§ 1. Forfeiture is where a person loses some property, right, privilege or benefit

in consequence of having done or omitted to do a certain act.

§ 2. **Lease.**—Thus, where a lease contains a provision enabling the lessor to put an end to the term if the lessee fails to pay the rent, or comply with the covenants, then if the lessee fails to pay his rent or repair, and the lessor puts an end to the term by re-entry, a forfeiture of the lease is said to take place.

§ 3. **Relief against forfeiture.**—In some cases the courts will relieve against a forfeiture, *i. e.* prevent the person entitled to take advantage of it from doing so, the general rule being that the court will relieve against a forfeiture when its object is to secure the performance of some collateral act, such as the payment of money, and when the court can give by way of compensation all that was expected or desired. (*Peachy v. Duke of Somerset*, 1 Str. 447; *Sloman v. Walter*, 1 Bro. Ch. 418; 2 White & T. Lead. Cas. 992.) Thus, the court will relieve against the forfeiture of a lease for non-payment of rent, on the lessee paying what is due. (*Snell Eq.* 274.) The powers of the court in this respect have been extended by statute, in England, to the case of forfeiture for breach of a covenant to insure against fire. 22 and 23 Vict. c. 35, § 14; 23 and 24 Vict. c. 126, § 2; *Wms. Real Prop.* 384; *Woodf. Land. & T.* 297 *et seq.**

§ 4. **Copyhold.**—A copyhold may be forfeited by a wrongful act to the prejudice of the lord, or by anything which amounts to a determination of the tenancy, *e. g.* by waste, refusal to perform the customary services, &c. *Elt. Copyh.* 200.

§ 5. **Ship.**—If the master or owner of a British ship conceals the British character of the ship, or assumes a foreign character with intent to deceive any person entitled to inquire into the matter, the ship is forfeited to the crown. *Merch. Shipp. Act*, 1854, s. 103, § 2; *The Annandale*, 2 P. D. 179, 218.

§ 6. **Estates.**—Formerly, forfeiture was a result of many acts by tenants or owners of

estates on the ground of their being considered by the feudal law as contrary to the duties of the tenants towards their lords. Thus, a feoffment of land by a tenant for life was a forfeiture of his estate, because it was an attempt to dispose of the reversion, (*Co. Litt.* 251a, where other instances of forfeiture are given; 2 Bl. Com. 275;) but this operation of a feoffment has been abolished. *Stat.* 8 and 9 Vict. c. 106. See *FEOFFMENT*.

§ 7. **In criminal law,** forfeiture now seldom occurs. If a person solemnizes or assists at the marriage of any descendant of King George II., in contravention of the *Stat.* 12 Geo. III. c. 11, his lands and goods are forfeited to the queen. (*Steph. Cr. Dig.* 39.) If a person is outlawed for treason, his lands are forfeited to the crown. If a person is outlawed for felony, he forfeits to the crown all his goods and chattels, real and personal, and also the profits of his freeholds during his life. After his death, the queen is further entitled to his freeholds for a year and a day, with the right of committing in them any waste she pleases (called the queen's year, day, and waste). Formerly, conviction for any kind of felony caused a forfeiture of goods and chattels, both real and personal, but this has been abolished. *Wms. Real Prop.* 126; 2 Bl. Com. 251; *Stats.* 33 and 34 Vict. c. 23; 54 Geo. III. c. 145.

FORFEITURE, (defined). 2 Bl. Com. 267; *Hob.* 242.

—— (what is). 4 Bac. Abr. 337.

—— (as applied to a mortgaged estate). 21 N. Y. 343, 366.

—— (by corporation). 9 Wend. (N. Y.) 352.

—— (by statute), *Dwar. Stat.* 743.

—— (in a covenant). *Cro. Jac.* 398.

—— (in an agreement). *Doug.* 620.

—— (not synonymous with "confiscation"). 3 Am. L. J. 46.

—— (of stock). 2 Hill (N. Y.) 127.

FORFEITURE OF MARRIAGE.—An ancient writ which lay against him who, holding by knight's service, and being under age and unmarried, refused to marry the woman whom the lord offered him without disparagement, and married another.—*F. N. B.* 141; *Reg. Orig.* 163.

FORFEITURE OF SILK, supposed to lie in the docks, used, in times when its importation was prohibited, to be proclaimed each term in the exchequer.

*These provisions have been repealed by the Conveyancing Act, 1881, which enacts (§ 14) that a forfeiture for a breach of any covenant or condition in a lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the breach complained of, and requiring him to remedy or make compensation for the same, and the lessee fails to comply with the notice within a reasonable time. Where a lessor proceeds to enforce a forfeiture the lessee may

apply to the court for relief, and the court may grant or refuse relief, as it thinks fit. This provision does not affect the law relating to forfeiture for non-payment of rent, and it does not extend to certain covenants and conditions, (*e. g.* those against assigning, underletting, &c., or providing for forfeiture on the lessee's bankruptcy and the like,) but, with these exceptions, it applies, notwithstanding any stipulation by the parties to the contrary.

FORFEITURE OF THE BODY, (defined). Hob. 270, 293.

FORFEITURE, QUESTIONS EXPOSING TO.—In cross-examination of witnesses and also in involuntary depositions, these questions need not be answered, the privilege of witnesses extending to cover them, *sed quære*.—*Brown*.

FORGABULUM, or FORGAVEL.—A quit rent; a small reserved rent in money.—*Jacob*.

FORGE—FORGERY.

§ 1. To forge is to do one of the following things with intent to defraud, namely, (1) to make a document purporting to be what it is not, or (2) to alter a document without authority in such a manner that if the alteration had been authorized it would have altered the effect of the document, or (3) to sign a document: (a) in the name of a person without his authority, whether such name is or is not the same as that of the person signing; (b) in the name of any fictitious person alleged to exist; (c) in a name represented as being the name of a different person from that of the person signing it, and intended to be mistaken for the name of the former; or (d) in the name of a person personated by the person signing the document, if the effect of the document depends upon the identity between the person signing the document, and the person whom he professes to be. Steph. Cr. Dig. 267 *et seq.*; 2 Russ. Cr. 618 *et seq.*; Reg. v. Martin, 5 Q. B. D. 34.

§ 2. At common law, forgery is a misdemeanor; by various statutes, both in England and America, the forgery of certain documents is felony. See COUNTERFEIT; UTTER.

FORGE, (in criminal law, defined). 42 Me. 392, 394; L. R. 1 C. C. R. 200.

FORGE OR FURNACE FOR THE MANUFACTURING OF IRON, (defined). 1 Stockt. (N. J.) 289, 296.

FORGED BILLS.—No title arises through a forgery; and the party who pays a forged bill will be himself the sufferer. But in the case of drafts by one bank on another bank, if merely the indorsement thereon is forged, the paying bank is protected in England, and in some cases in America, and the payment, so far

as concerns that bank, is a good payment 16 and 17 Vict. c. 59, § 19.

FORGED BILLS, (what are). 1 Ohio St. 185, 187.

FORGERY, (defined). 28 Cal. 205; 19 Iowa 299; 3 Cush. (Mass.) 150, 152; 11 Gray (Mass.) 197, 198; 6 Serg. & R. (Pa.) 568, 570; 8 Yerg. (Tenn.) 150, 151; 2 Leach C. C. 775, 785; 2 Bish. Cr. L. § 523; 4 Bac. Abr. 353; 4 Bl. Com. 247. — (what constitutes). 5 Day (Conn.) 250; 29 Iowa 495; 2 Me. 365; Thach. (Mass.) Cr. Cas. 187; 27 Minn. 315; 6 City H. Rec. (N. Y.) 27; 15 Hun (N. Y.) 155; 4 Park. (N. Y.) Cr. 217; 1 Wend. (N. Y.) 198; 15 Ohio 717, 721; 1 Bay (S. C.) 120, 153; 1 Brod. & B. 300; 2 Ld. Raym. 1461.

— (what is not). 4 Mass. 45; 5 City H. Rec. (N. Y.) 87; 6 Id. 25, 61.

— (indictment for). 50 Me. 409.

— (in treaty between England and the United States). 6 Best & S. 522.

— (of an indenture of apprenticeship). 1 Leach C. C. 366.

— (of promissory note). 29 Iowa 495.

— (when a felony). 2 Bay (S. C.) 262.

FORGIVE A'S DEBT, (in a will). 1 Whart. (Pa.) 87, 90; 3 Atk. 579; 2 Cox Ch. 118, 122; 1 P. Wms. 83; 1 Wils. 178; 3 Young & J. 114.

FORGIVE THE BOND DEBT, (in a will). 12 Price 407.

FORGIVING IT, (of a debt). 2 Burr. 969, 979.

FORHERDA.—A headland, or foreland.—*Cowell*.

FORI DISPUTATIONES.—In the civil law, arguments or disputations before a court. 1 Kent Com. 530.

FORINSECUM MANERIUM.—That part of a manor which lies without the town, and is not included within the liberties of it. Paroch. Antiq. 351.

FORINSECUM SERVITIUM.—The payment of extraordinary aid.—*Kenn. Gloss.*

FORINSECUS.—Outlawed, or on the outside.

FORISBANITUS.—Banished. Mat. Par. 1245.

FORISFACERE.—To forfeit; to confiscate; to do something against law; to injure another.

Forisfacere, i. e. extra legem seu consuetudinem facere (Co. Litt. 59): *Forisfacere, i. e. to do something beyond law or custom.*

FORISFACTA.—Literally "gone away out." Goods forfeited for treason or felony were so called because the property therein had gone away out of the owner.

FORISFACTURA.—Forfeit; a crime which works a forfeiture; a fine.

FORISFACTUM.—A forfeit; forfeited property; a crime.

FORISFACTUS.—A criminal; especially one whose life is forfeited by reason of his commission of a capital offence.—*Spel. Gloss.*

FORISFAMILIATION.—"A son was said to be forisfamiliar if his father assigned him part of his land and gave him seisin thereof, . . . and the son expressed himself satisfied with such portion." 1 Reeves Hist. Eng. Law 110. See **ADVANCEMENT**.

FORISFAMILIATUS.—An emancipated son.

FORISJUDICATIO.—For judgment (*q. v.*)

FORISJUDICATUS.—One who is forjudged. See **FORJUDGE**.

FORISJURARE.—To forswear, or abjure; as to forswear one's country. Also, to abandon. See **ABJURATION**.

FORJUDGE — FORJUDGMENT.—*NORMAN-FRENCH. forjurer* (Britt. 20a), from *foris*, out, and *judicare*, to judge.

To forjudge is to deprive a person of a thing or right by a judgment. Thus, where under the old law a mesne lord was bound to acquit or indemnify his tenant paravail against services demanded of him by the lord paramount, and failed to do so, he was liable to be forjudged or deprived of the services of the tenant paravail. Co. Litt. 100a.

FORJUDICATUS.—Outlawed.

FORLER-LAND.—Land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained.

FORM — FORMALITY.—See **IRREGULAR**; also, **ACTION**, §§ 6-17. As to common forms in deeds, see *ante*, p. 7 n. As to the history of juridical formalities, see Grimm *Deutsche Rechtsalterthümer*; 3 Sav. Syst. 238.

FORM, (of bond prescribed by statute). 12 Serg. & R. (Pa.) 306, 314; 13 *Id.* 193.

— (of notice prescribed by statute). Cowp. 26, 30.

— (of order prescribed by statute). 1 East 64.

FORM FOLLOWING, (in an award). 2 Cai. (N. Y.) 320.

FORM OF CONVICTION, (in a statute). 3 Esp. 198.

Forma dat esse (2 Eden 99): Form gives being.

Forma legalis, forma essentialis (10 Co. 100): Legal form is essential form. The writing required by (*e. g.*) the fourth section of the English Statute of Frauds to the validity of the five contracts in such section specified, is the *forma legalis* (*i. e.* the prescribed legal form) of such contracts, so far as regards not the constitution but the proof of the contract; and, inasmuch as that section permits no alternative mode of proof, but renders the writing the exclusive pre-appointed evidence of the contract, the legal form is in fact also a *forma essentialis* (*i. e.* an indispensable form). On the other hand, the seventeenth section of the same statute allows various alternative modes of proof other than the written proof of the class of contracts with which it deals, and in a contract of that class the writing would not be essential.

Forma non observata infertur annullatio actus (12 Co. 7): From not being observed a nullity of the act is inferred.

FORMA PAUPERIS.—See **IN FORMA PAUPERIS**.

FORMALITIES.—Robes worn by the magistrates of a city or corporation, &c., on solemn occasions.—*Encycl. Lond.*

FORMALITIES OF CONTRACT.—These are governed in international law by the *lex loci actus*, *i. e.* the law of the place in which the contract is entered into.

FORMALITY, (defined). 10 R. I. 550, 553.

FORMATA.—Canonical letters.

FORMATA BREVIA.—See **BREVIA FORMATA**.

FORMED ACTION.—An action for which a form of words is prescribed, which must be strictly followed. 10 Mod. 140.

FORMEDON, WRIT OF.—This was an action in the nature of a writ of right. There were three species of the writ, viz., (1) *formedon in the descender*; (2) *formedon in the remainder*; and (3) *formedon in the reverter*; these forms of writ being applicable respectively in the following cases: (1) *Formedon in the descender*, where the tenant in tail aliened the land entailed or was disseised thereof and died, and the heir in tail wanted to recover the land against the then tenant of the freehold; (2) *formedon in the remainder*, where the tenant for life or in tail with remainder to a third person in fee or in tail died, (and, in the case of tenant in tail without issue,) and afterwards a stranger intruded upon the land and kept the remainderman out of possession, and the remainderman wanted to recover the land from the intruder; and (3) *formedon in the reverter*, where the tenant in tail died without issue, and the reversioner wanted to recover the lands against the then tenant thereof. All these forms of this writ were abolished by the Stat. 3 and 4 Will. IV. c. 27, § 36, but it would be a mistake to suppose that the analogous remedies are abolished. See **DISCONTINUANCE**, § 2.

FORMEDON, (writ of, defined). 3 Bl. Com. 192.

FORMELLA.—A certain weight of above seventy pounds, mentioned in Stat. 51 Henry III.—*Cowell*.

FORMER ADJUDICATION, or FORMER RECOVERY.—An adjudication or recovery in a former action. See RES JUDICATA.

FORMER RECOVERY, (a mere motion is not). 2 Ind. 341.

—— (when a bar). 2 Johns. (N. Y.) 227; 5 Id. 129; 7 Id. 20, 22; 8 Id. 383.

FORMER SUIT, (in a statute). 60 Me. 545.

FORMS AND MODES OF PROCEEDING, (in a statute). 1 Baldw. (U. S.) 544, 564.

FORMULA.—(1) In common law practice, a set form of words used in judicial proceedings; (2) in the civil law, an action.—*Calv. Lex*.

FORMULÆ.—In Roman law, when the *legis actiones* were proved to be inconvenient, a mode of procedure called *per formulas* (i. e. by means of *formule*) was gradually introduced, and eventually the *legis actiones* were abolished by the *Lex Aebutia*, B. C. 164, excepting in a very few exceptional matters. The *formulæ* were four in number, namely: (1) The *Demonstratio*, wherein the plaintiff stated, i. e. showed the facts out of which his claim arose; (2) the *Intentio*, where he made his claim against the defendant; (3) the *Adjudicatio*, wherein the *judex* was directed to assign or adjudicate the property or any portion or portions thereof according to the rights of the parties, and (4) the *Condemnatio*, in which the *judex* was authorized and directed to condemn or to acquit according as the facts were or were not proved. These *formulæ* were obtained from the magistrate (*in jure*), and were thereafter proceeded with before the *judex* (*in judicio*).—*Brown*.

FORMULARY.—A form; a precedent.

FORNAGIUM.—The fee taken by a lord of his tenant, who was bound to bake in the lord's common oven (*in furno domini*); or for a commission to use his own.

FORNICATION.—The act of incontinency in single persons; if either party be married it is adultery on his or her part. During the English Commonwealth, a second offence was made felony without benefit of clergy. (Scob. 121.) After the Restoration, the offence was left to be dealt with by the spiritual court according to the rules of the canon law. Proceedings under the canon law for incontinency have fallen into desuetude. (4 Steph. Com. (7 edit.) 280.) In some of the States this offence is made indictable by statute, in others it is not punishable.

FORNICATION, (defined). 56 Ind. 263; 1 Mont. T. 359.

—— (what constitutes). 36 Ark. 39.

—— (what is not). 36 Ark. 84.

FORPRISE.—An exception or reservation; also an exaction; or taking beforehand.—*Cowell*.

FORSCHEL, or FORSCHET.—A strip of land lying next to the highway.—*Cowell*.

FORSCHOKE.—Forsaken. See FORESCHOKE.

FORSES.—Waterfalls.—*Cam. Brit.*

FORSPEAKER.—An attorney or advocate in a cause.—*Blount*.

FOR-SPECA, FOR-SPRECA.—Prolocutor; paronymphus.—*Anc. Inst. Eng.*

FORSTAL.—See FORESTALL, § 1.

Forstellarius est pauperum depressor et totius communitatis et patriæ publicus inimicus (3 Inst. 196): A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.

FORSWEAR.—(1) to abjure (see ABJURATION); (2) to swear to that which is false; but not, necessarily, to commit perjury, for the oath may have been an extrajudicial one, or some other of the necessary elements of perjury may be wanting, materiality for example. Thus, it is not always actionable *per se* to say of a man that he has forsworn himself.

FORSWORN, (charge of being, distinguished from charge of perjury). 12 Mass. 498, 501; 1 Cro. 135, 395.

—— (charge of being, imports perjury.) 1 Cro. 297, 348, 492.

—— (charge of being, when actionable). 2 Harr. & J. (Md.) 363; 3 Cal. (N. Y.) 73; 2 Johns. (N. Y.) 10; 3 Pa. 105, 106; 4 Co. 13, 15; 1 Cro. 573, 609; 3 Lev. 166; 1 Vin. Abr. 406.

—— (charge of being, when not actionable). 1 Cro. 788, 905; Cro. Jac. 190; 8 Dowl. & Ry. 140; 1 Chit. Gen. Pr. 44.

—— (in a declaration). 2 Bulst. 150.

FORTALICE.—A fortress or place of strength, which anciently did not pass without a special grant. 11 Hen. VII. c. 18.

FORTALITIUM.—A fortalice (*q. v.*)

FORTESCUE.—John Fortescue was chief justice of the King's Bench in the reign of Henry VI.; he died about 1476. He wrote the well-known treatise *De Laudibus Legum Angliæ*.

FORTHCOMING, ACTION OF.—A process, in the Scotch law, for effectuating the arrestment (attachment) of debts due to one's debtor.

FORTHCOMING, (in a bond). 3 Munf. (Va.) 417.

FORTHCOMING BOND.—A bond given to a sheriff who has seized property, conditioned that the obligor will have it ready to be delivered up to the sheriff when required by law, upon which the sheriff intrusts the property to the obligor's custody.

FORTHWITH.—As soon as, by reasonable exertion, confined to the object, a thing may be done. Thus, when a defendant is ordered to plead forthwith, he must plead within twenty-four hours. When a statute enacts that an act is to be done "forthwith," it means that the act is to be done within a reasonable time. 1 Chit. Arch. Prac. (12 edit.) 164.

FORTHWITH, (defined). 3 Col. T. 313, 314; 7 Man. & G. 481, 493; 3 Chit. Gen. Pr. 112.

—— (synonymous with "immediately"). 7 Man. & G. 493.

—— (in a bond). 14 Allen (Mass.) 66.

—— (in a covenant). 9 Car. & P. 706.

—— (in a policy of insurance). 75 Pa. St. 378.

—— (in an agreement). 1 Moo. & M. 300.

—— (in bankruptcy rules). 7 Ch. D. 238.

—— (in rule of court). 2 Edw. (N. Y.) 328.

—— (in a statute). 13 Vr. (N. J.) 260, 262;

12 Ad. & E. 672, 680.

—— (in a statute, synonymous with "all reasonable dispatch"). 20 How. (N. Y.) Pr. 222.

—— (in order of court). L. R. 6 Eq. 521.

—— (when means "reasonable time"). Wilberf. Stat. L. 132.

FORTHWITH GIVE NOTICE, (in fire insurance policy). 67 N. Y. 274; 12 Wend. (N. Y.) 460.

FORTIA.—(1) Power, dominion or jurisdiction. (Leg. Hen. I. c. 29.) (2) Unlawful force.—*Spel. Gloss.*

FORTIA FRISCA.—Fresh force (*q. v.*)

FORTILITY.—A fortified place; a castle; a bulwark.—*Cowell.*

FORTIOR.—Stronger.

Fortior est custodia legis quam hominis (2 Roll. 325): The custody of the law is stronger than that of man.

Fortior et æquior est dispositio legis quam hominis (Co. Litt. 234): The disposition of the law is stronger and more just than that of man.

FORTLETT.—A place or port of some strength; a little fort.—*O. N. B.* 45.

FORTUITOUS.—Accidental; inevitable. Thus, a "fortuitous collision" is an accidental collision; a "fortuitous event" is one which was not brought about by the parties, and which could not have been foreseen and prevented by them. See ACCIDENT; ACT OF GOD; CASUS FORTUITUS.

FORTUNA.—(1) Fortune; (2) treasure-trove.—*Jacob.*

Fortunam faciunt judicem (Co. Litt. 167): They make fortune a judge.

FORTUNE-TELLERS.—Persons pretending or professing to tell fortunes, and punishable as rogues and vagabonds, or disorderly persons.

FORTUNIUM.—A tournament or fighting with spears; and an appeal to fortune therein. Mat. Par. 1241.

FORTY-DAYS' COURT.—The court of attachment in forests, or wood-mote court. See COURT OF ATTACHMENTS; FOREST COURTS.

FORUM.—A court; the court to the jurisdiction of which a party is liable, or where he seeks his remedy. So called from the Roman forum, which was the place where the courts were held. *Forum competens*, a court having jurisdiction over the suit; *forum incompetens*, a court not having such jurisdiction.

FORUM CONSCIENTIÆ.—The tribunal or court of conscience.

FORUM CONTENTIOSUM.—An ordinary court of justice, as distinguished from the court of conscience.

FORUM CONTRACTUS.—The court of the place where a contract is made. The forum of a contract, considered as a place of jurisdiction. 2 Kent Com. 463.

FORUM DOMESTICUM.—A domestic court. 1 W. Bl. 82.

FORUM DOMICILII.—The court of the domicile. The domicile of a defendant, considered as a place of jurisdiction. 2 Kent Com. 463.

FORUM ECCLESIASTICUM.—An ecclesiastical or spiritual court, as distinguished from a secular court.

FORUM ORIGINIS.—The court of the country of a man's domicile by birth.

FORUM REI—The same as the *forum domicilii* (*q. v.*) Also, the court of the place

where the thing in controversy is; the same as the *forum rei sitæ* (q. v.)

FORUM REI GESTÆ.—The court of the *res gesta*, or transaction. The place where an act is done, considered as a place of jurisdiction. 2 Kent Com. 463.

FORUM REI SITÆ.—The court where the thing in controversy is situated. The place where the subject-matter in controversy is situated, considered as a place of jurisdiction. 2 Kent Com. 463.

FORUM SECULARE.—A secular, as distinguished from an ecclesiastical or spiritual, court.

FORUTH.—A long slip of ground.—*Cowell*.

FORWARDED TO BE, (in a contract). 13 N. Y. 569.

FORWARDING MERCHANT, or FORWARDER.—One who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, having no concern in the vessels or wagons by which they are transported, and no interest in the freight, and not being deemed a common carrier, but a mere warehouseman and agent. Story Bailm. §§ 502, 509.

FORWARDER, (when common carrier). 15 Minn. 270.

— (when not common carrier). 12 Johns. (N. Y.) 232.

— (when considered warehouseman). 2 Wheel. Am. C. L. 142.

— (liability of). 2 Wend. (N. Y.) 594; 2 Wheel. Am. C. L. 146.

FORWARDING MERCHANT, (who is). Ang. Carr. § 75; Story Bailm. § 502.

FOSSA.—A ditch full of water, wherein women committing felony were drowned; also, a grave. See *FURCA*.

FOSSAGIUM.—The duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

FOSSATORUM OPERATIO.—The service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the ditches round a city or town, for which some paid a contribution, called *fossagium* (q. v.)—*Cowell*; *Kenn. Gloss*.

FOSSATUM.—A dyke, ditch or trench; a place enclosed by a ditch; a moat; a canal.

FOSSELLUM.—A small ditch.—*Cowell*.

FOSSWAY, or FOSSE.—One of the four ancient Roman ways through England. *Frevisa* describes it thus: "The first and gretest

of the four weyes is called *fosse*, and stretches out of the southe into the north, and begynneth from the corner of Cornewaille, and passeth forth by Devenshyre, by Somersete, and forth besides Tetbury, upon Cotteswold, beside Coventre, unto Leycester, and so forth, by wylde pleynes towards Newerke, and endeth at Lincoln." (Polychron l. 1, c. xiv.)—*Wharton*.

FOSTERLAND.—Lands allotted for the maintenance of a person.—*Cowell*.

FOSTERLEAN.—The remuneration fixed for the rearing of a foster-child; also, the jointure of a wife.—*Jacob*.

FOUND, (in a statute). 18 Pick. (Mass.) 262; 4 Halst. (N. J.) 173, 187; 1 Chit. Gen. Pr. 402.

— (equivalent to "having been seen or discovered"). 6 Price 383; 7 Com. Dig. 766.

FOUND COMMITTING, (in a statute). 2 C. P. D. 194; 1 Chit. Gen. Pr. 598.

FOUND COMMITTING OFFENCES, (in a statute). 2 Chit. Gen. Pr. 140.

FOUND, COUNTY WHERE, (in statute prescribing where suit shall be brought). 66 Ill. 157.

FOUND DRUNK ON LICENSED PREMISES, (in licensing act). 2 Q. B. D. 403.

FOUND IN A DWELLING-HOUSE, (in a statute). 1 Chit. Gen. Pr. 623.

FOUND TO BE OF UNSOUND MIND, (in a statute). 7 Q. B. D. 25.

FOUNDATION.—The founding or building of a college, hospital or other charity. The incorporation of the institution is the foundation; and he who endows it with land or other property is the founder.

FOUNDED ON CONTRACT, (in a statute). 111 Mass. 77, 82.

FOUNDER.—One who endows a charitable or educational institution; one who gives land or other property, or revenue to a corporation.

FOUNDEROSUS.—Out of repair. Cro. Car. 366.

FOUNDLING.—A new-born child abandoned by its parents, who are unknown. The settlement of such a child is in the place where found.—*Bouvier*.

FOUNDLING HOSPITALS.—Charitable institutions which exist in most countries, for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections.

FOUR CORNERS.—The four corners of an instrument means that which is contained on the face of it (without any aid from the knowledge of the circum-

stances under which it is made). This is said to be within its four corners, because every deed is still supposed to be written on one entire skin, and so to have but four corners.—*Wharton*.

FOUR MONTHS AFTER, (in a promissory note). 9 Gray (Mass.) 199, 201.

FOUR SEAS.—A term, in English law, for the four seas surrounding England. Within the four seas means within the jurisdiction of England. 4 Co. 125.

FOURCHER.—To put off or delay an action.—*Termes de la Ley*.

FOURCHING.—The act of delaying legal proceedings.—*Termes de la Ley*.

FOURIERISM.—Of all the forms of socialism, that commonly known as fourierism manifests the greatest skill in its construction, and the greatest foresight of objections. This system does not contemplate the abolition of private property, nor even of inheritance; on the contrary, it avowedly takes into consideration, as an element in the distribution of the produce, capital as well as labor. It purposes that the operations of industry should be carried on by associations of about two thousand members, combining their labor on a district of about a square league in extent, under the guidance of chiefs selected by themselves. In the distribution, a certain minimum is first assigned for the subsistence of every member of the community, whether capable, or not, of labor. The remainder of the produce is shared in certain proportions, to be determined beforehand, among the three elements—labor, capital and talent. The capital of the community may be owned in unequal shares by different members, who would in that case receive, as in any other joint stock company, proportional dividends. The claim of each person on the share of the produce apportioned to talent is estimated by the grade or rank which the individual occupies in the several groups of laborers to which he or she belongs, these grades being in all cases conferred by the choice of his or her companions. The remuneration, when received, would not of necessity be expended or enjoyed in common; there would be separate *ménages* for all who preferred them, and

no other community of living is contemplated than that all the members of the association should reside in the same pile of buildings, for saving of labor and expense, not only in building but in every branch of domestic economy; and in order that, the whole buying and selling operations of the community being performed by a single agent, the enormous portion of the produce of industry, now carried off by the profits of mere distribution, might be reduced to the smallest amount possible. 1 Mill Pol. Ec. 260.

FOURTH PART OF A HOUSE, (in a declaration). Cro. Eliz. 286.

FOUTGELD.—See FOOTGELD.

FOWLS OF WARREN. — According to Coke, they are the partridge, quail, rail, pheasant, woodcock, mallard, heron, &c. According to Manwood, they are the pheasant and partridge only. Co. Litt. 233 a; Manw. 95.

FOX'S ACT.—The Stat. 52 Geo. III. c. 60, which secured to juries, upon the trial of indictments or informations for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment or information. See LIBEL.

FOY.—Faith; allegiance; fidelity.

FRACTIO.—A breaking; a portion of a thing less than the whole.

FRACTION OF A DAY.—A portion of a day. The law makes no fraction of time, but in cases of necessity, and for the purposes of justice. When, therefore, a thing is to be done upon one day, all that day is allowed to do it in. Every minor comes of age on the day preceding the anniversary of his twenty-first birthday, and may act as of full age the first moment of that day. But when it is essential to prove which of two or more acts was done first, *e. g.* where two or more conveyances relating to the same land are lodged for record on the same day, this rule does not apply.

FRACTION OF A DAY, (in bankruptcy proceedings), 60 Me. 88; 11 Am. Rep. 181.

Fractionem diei non recipit lex (Lofft 572): The law does not take notice of a portion of a day.

FRACTITIUM.—Arable land.—*Mon. Angl.*

FRACTURA NAVIUM.—Wreck of shipping at sea.

FRAME HOUSE FILLED IN WITH BRICK, (in a policy of insurance). 6 Cow. (N. Y.) 673; 7 Wend. (N. Y.) 270.

FRANC.—A French coin of the value of a little over eighteen cents.

FRANC ALEU, or FRANC ALEU.—In the French law, an absolute free estate of inheritance; allodial land. *See* 3 Kent Com. 498 n.

FRANCHILANUS.—A freeman.—*Chart. Henry IV.* A free tenant.—*Spel. Gloss.*

FRANCHISE.—**NORMAN-FRENCH:** *franchise*, from *franc*, free. *Britt.* 29 b. *See* LIBERTY.

§ 1. Franchise, in its general sense, is a liberty or privilege.

§ 2. At common law, a franchise is a royal privilege or branch of the crown's prerogative, subsisting in the hands of a subject, either by grant or by prescription. (2 Bl. Com. 37; Co. Litt. 114a.) Franchises are of two classes: (1) Those which originally formed part of the crown's prerogative, and could therefore be exercised by the king *jure coronæ* before they were granted to a subject; such as the franchises of waifs, estrays, wrecks, royal fish, forests, &c.; (2) those which can only be created by granting them to a subject; such as fairs, markets, tolls, parks, warrens, &c. (*See* the various titles.) The distinction is so far of importance that when a franchise of the former class is appendant to a manor, or the like, and they both come into the hands of the crown, the appendancy is extinguished, because the franchise merges in the prerogative; while in the case of a franchise of the latter class the appendancy would be preserved. Case of the Abbot of Strata Marcella, 9 Co. 23. *See* IN CAPITE.

§ 3. A franchise is an incorporeal hereditament (*see* HEREDITAMENT); it not only authorizes something to be done, but gives the owner the right of preventing all other persons from interfering with its exercise. Thus, the owner of a market, ferry, or the like, can generally prevent any one from setting up a new market or ferry so near to his as to diminish his cus-

tom. 1 Steph. Com. 664. *See, however, Mayor of Penryn v. Best*, 3 Ex. D. 292.

§ 4. Franchise also means the locality subject to a franchise.

§ 5. **Parliamentary franchise.**—In ancient times, among other franchises usually granted by the crown to a new borough on its incorporation, was the right of sending burgesses to parliament, and, hence, franchise now means the right to elect members of parliament, whether in boroughs or counties. 12 Co. 120; Hale Anal. 18; H. Cox Inst. *See* BOROUGH; ELECTION, § 3; PARLIAMENT.

§ 6. **In American law**, franchise means: (1) A particular privilege conferred upon individuals by grant from the government. (3 Kent Com. 458.) Franchises are usually held by corporations created for the purpose of enjoying them, such as railroad, steamboat, ferry and telegraph companies. (2) The elective franchise, or right to vote, which is enjoyed by all male citizens of twenty-one years of age or upwards, except unpardoned felons.

FRANCHISE, (defined). 13 Pet. (U. S.) 519, 595; 22 Cal. 398, 422; 25 Conn. 19, 36; 36 *Id.* 255, 266; 73 Ill. 541; 13 Bush (Ky.) 185, 189; 66 Me. 488; 45 Mo. 17, 20; 3 Duer (N. Y.) 119, 144; 15 Johns. (N. Y.) 387; 15 N. Y. 170; 5 Wend. (N. Y.) 211, 217; 15 Serg. & R. (Pa.) 130; Ang. & A. Corp. 2.

— (what is). 17 Conn. 40; 32 N. H. 507; 3 Paige (N. Y.) 318; 11 East 168, 175.

— (what is not). 66 Me. 488, 512.

— (grant of). 3 Duer (N. Y.) 119.

FRANCHISE, CORPORATE, (defined). 87 Ill. 317.

FRANCIGENA.—A name anciently applied to foreigners generally.—*Jacob.*

FRANCUS.—Free; a freeman; a Frank.—*Spel. Gloss.*

FRANCUS BANCUS.—Freebench (*q. v.*)

FRANCUS HOMO.—A free man.

FRANCUS PLEGIUS.—A frankpledge. *See* FRANKPLEDGE.

FRANCUS TENENS.—A free holder. *See* FRANK TENEMENT.

Frangenti fidem, fides frangatur eidem: Let faith be broken with him who breaketh faith.

FRANK CHASE.—A liberty of free chase.

FRANK FEE.—Freehold lands exempted from all services, but not from homage. The opposite of ancient demesne and copyhold (*q. v.*)

FRANK FERM.—Lands or tenements changed in the nature of the fee by feoffment, &c., out of knight service, for certain yearly acknowledgments. Britt. c. 66.

FRANK FOLD.—See FOLDAGE.

FRANK LAW.—The full benefit and enjoyment of the common law of the land. To lose this was perpetual infamy and exclusion from the privilege of giving testimony on oath. Bract. 292b.

FRANK TENANT.—A freeholder. Litt. § 91.

FRANK TENEMENT.—The same as freehold (*q. v.*) Co. Litt. 43b.

FRANKALMOIGN.—NORMAN-FRENCH: *franche aumoyne*, or *aumone*, (Britt. 164b; Loysel Inst. Cout. Gloss. s. v.) free alms (because the tenant was free from temporal service.) Britt. 164b.

The tenure by which the lands of the church are for the most part held. (Wms. Real Prop. 132.) "And such tenure beganne first in old time. When a man in old time was seized of certain lands or tenements in his demense as of fee, and of the same land infeoffed an abbot and his covent, or prior and his covent, to have and to hold to them and their successors in pure and perpetuall almes or in frankalmoigne, in such case the tenements were holden in frankalmoigne." (Litt. § 133.) Tenants in frankalmoign do no fealty or other temporal service to their lord, but are only bound to celebrate divine service in accordance with the book of Common Prayer, (*Id.* § 135; Co. Litt. 95b;) and, if they fail to do so, the lord cannot distrain them, but can only complain to their ordinary or visitor. Litt. § 136. See TENURE BY DIVINE SERVICE.

FRANKBANK.—"In some boroughes, by custome, the wife shall have for her dower all the tenements which were her husband's. And this is called frank banke, *francus bancus*." Litt. § 166. See DOWER; FREEBENCH.

FRANKLIN, or FRANKLEYN.—A steward; a bailiff of land; a freeholder; a freeman.

FRANKMARRIAGE.—Free marriage. LOW LATIN: *liberum maritagium*. *Maritagium* was a dowry or gift to a woman about to marry; it was said to be "free" when it was free from services. Bract. 77a. 92b; Co. Litt. 21b.

When land was given with the words "in frankmarriage" to a man and his wife by the father or some blood relation (the Norman word in Littleton (§ 17) is "cousin," which means a blood relation; Blackstone translates it by the English word cousin (2 Bl. Com. 115)) of the wife, then she and her husband had the land to them and their issue, although no words of inheritance or procreation were used in the gift.

They had therefore a kind of estate in tail special, the peculiarity of which was that they and their issue to the fourth degree held the land free of services to the donor, and that they had to bring it into hotchpot before they could take any other land by descent in fee-simple from the donor. (Co. Litt. 21b; Digby Hist. R. P. 75, 157; see, also, Litt. § 226 *et seq.* See ESTATE TAIL; HOTCHPOT.) It is now obsolete.

FRANKPLEDGE.—NORMAN-FRENCH *fraunc plege*, free pledge. A mistranslation of the Saxon word *friborh* or *frithborh*, literally pledge or security for peace.

The name given to those associations of ten persons into which, about the time of the Conquest, all men were bound to combine themselves. They were standing sureties for one another's good behavior. The "view of frankpledge," or duty of seeing that these associations were kept in perfect order and number, was vested in the local court, especially the court-leet (*q. v.*) 1 Stubbs Const. Hist. 87, where the authorities are referred to; also Britt. 72a, and Nichol's note (g).

FRASSETUM.—A wood or wood ground where ash trees grow. Co. Litt. 4b.

FRATER.—A brother.

FRATER CONSANGUINEUS.—A brother by the father's side, opposed to *frater uterinus*, the brother by the mother's side.

Frater fratri uterino non succedit in hæreditate paterna: A brother shall not succeed an uterine brother in the paternal inheritance. This maxim is now superseded; for by 3 and 4 Will. IV. c. 106, § 9, the half-blood inherit next after any relation in the same degree of the whole blood and his issue, where the common ancestor is a male, and next after the common ancestor where a female, so that the brothers of the half-blood, on the part of the father, inherit next after the sisters of the whole blood on the part of the father and their issue, and the brothers of the half-blood on the part of the mother inherit next after the mother.

FRATER NUTRICIUS.—A bastard brother.

FRATER UTERINUS.—A brother by the mother's side, opposed to *frater consanguineus*.

FRATERNIA.—A fraternity or brotherhood.

FRATERNITIES.—Bodies corporate.

FRATRES CONJURATI.—Sworn brothers, or companions for the defence of their sovereign, or for other purposes.—*Hov.* 445.

FRATRIAGE.—A younger brother's inheritance.

FRATRICIDE.—The killing of a brother or sister.

FRAUD.—LATIN: *fraus*, apparently derived, with *fra* and *fraus* (a morsel), from a root signifying to break. 1 Corssen 130.

§ 1. Fraud is used in many senses, but the point common to all of them is pecuniary advantage gained by unfair means.

§ 2. **Actual fraud** is where one person causes pecuniary injury to another by intentionally misrepresenting or concealing a material fact which from their mutual position he was bound to explain or disclose. (Chit. Cont. 630; Snell Eq. 360; Poll. Cont. 472 *et seq.* See CONCEALMENT; MISREPRESENTATION.) This kind of fraud is also sometimes called "personal" or "moral," as opposed to "legal" or "constructive" fraud. *Infra*, § 6.

§ 3. The difficulty in saying whether a particular act amounts to fraud, lies in the necessity of determining what relation gives rise to the obligation to disclose a fact which if disclosed would materially affect the conduct of the defrauded person; and as the variations of human transactions and circumstances are infinite, an exhaustive enumeration of the relations giving occasion for fraud is impossible. Moreover, in many cases the effect of fraud may be counteracted by the conduct of the defrauded person; as where he does not rely on the representation, (*see* *DOLUS DANS LOCUM CONTRACTUI*), or where he is guilty of gross negligence. Chit. Cont. 630; Central Railway Co. v. Kisch, L. R. 2 H. L. 120. See the observations of Fry, J., in *Davies v. London and Prov. & C. Co.*, 8 Ch. D. at p. 474.

The following are some of the more important instances of actual fraud—

§ 4. **By misrepresentation or concealment.**—If a person, by intentional misrepresentation or concealment of a material fact peculiarly within his own knowledge, induces another person to enter into a contract, conveyance or similar transaction with him, which he would not have entered into had he known the truth, the contract or other transaction is fraudulent, as where a person is induced to purchase a business by false accounts of its position and profits. *Rawlins v. Wickham*, 3 De G. & J. 304.

§ 5. **By matter subsequent.**—Fraud

also exists when a person enters into a contract, conveyance or similar transaction, with the intention of afterwards doing some act of such a nature that if the other party had known of his intention he would not have entered into the transaction. (Poll. Cont. 472.) Accordingly if A. induces B. to enter into a contract with him with the object of committing an illegal or unlawful act to the injury of B., that is, a fraud on B.; thus, a separation deed is fraudulent if the wife's real object in entering into it is to enable her to renew a former illicit intercourse which has been concealed from the husband, (*Evans v. Carrington*, 2 De G. F. & J. 481;) so it is a fraud to buy goods with the intention of not paying for them. *Ferguson v. Carrington*, 9 Barn. & C. 59; *Clough v. L. & N. W. Rail. Co.*, L. R. 7 Ex. 26.

§ 6. **Constructive, or legal fraud.**—Fraud sometimes exists where no wrongful intention is proved. In this sense of the word, "fraud," or "constructive" or "legal fraud," is *nomen generalissimum*,* and indicates the cases in which a court will not enforce or will set aside a contract, instrument or transaction, "in which the court is of opinion that it is unconscientious for a person to avail himself of the . . . advantage which he has obtained." (*Torrance v. Bolton*, L. R. 8 Ch. 124.) The principal instances of this kind of fraud are as follows—

§ 7. **Intrinsic fraud.**—First, the fraud "may be apparent from the intrinsic nature and subject of the bargain itself, such as no man in his senses and not under delusion would accept on the one hand, and as no honest and fair man would accept on the other, which are inequitable and unconscientious bargains and of such even the common law has taken notice, for which, if it would not look a little ludicrous, might be cited *James v. Morgan*, 1 Lev. 111." (*Per* Lord Hardwicke in *Chesterfield v. Janssen*, 2 Ves. 125; 1 Atk. 352; 1 White & T. Lead. Cas. 483.) *James v. Morgan* is the celebrated case in which a man agreed to buy a horse for a barley-corn for the first nail on the horse's shoes, two barley-corns for

* See Broom Com. L. 337; *Thompson v. Eastwood*, 2 App. Cas. 243. "Legal," of course, here does not mean "lawful," but something created or presumed by law, not actually existent.

the second, and so on double for every succeeding nail. There being thirty-two nails, the quantity came to 500 quarters of barley. The vendor only recovered £8 for the value of the horse.

§ 8. **Fraud presumed from circumstances.**—Secondly, the fraud may be presumed from the circumstances and condition of the parties contracting, by that rule of equity established to prevent one person from taking surreptitious advantage of the weakness or necessity of another, “which knowingly to do is equally against conscience as to take advantage of his ignorance; a person is equally unable to judge for himself in one as the other.” (*Chesterfield v. Janssen, ubi supra.*) The principal instances of this kind of fraud occur (1) where there is a *confidential* or *fiduciary relation* between the parties; hence all contracts and conveyances whereby benefits are secured by children to their parents or guardians, and between *cestuis que trust* and their trustees, are always liable to be set aside, unless they are entered into with scrupulous good faith and are reasonable under the circumstances, (Snell Eq. 376. See FIDUCIARY; UNDUE INFLUENCE; VOLUNTARY; New Sombrero Phosphate Co. v. Erlanger, 5 Ch. D. 73;) (2) where one person takes an unfair advantage of the necessities or inexperience of another; it is on this ground that *catching bargains* with heirs, reversioners and expectants, for the sale of their reversions or expectancies, during the life of their parents or ancestors, will in general be relieved against, unless the purchaser can show that a fair price was paid. Snell Eq. 383; *Chesterfield v. Janssen, ubi supra*; *O’Rorke v. Bolingbroke*, 2 App. Cas. 833. See EXPECTANT HEIR. See, also, *Hart v. Swaine*, 7 Ch. D. 42, where a sale of copyhold land by a person who believed and represented it to be freehold was set aside on the ground of legal fraud.

§ 9. **Public policy.**—Thirdly, a transaction may be fraudulent on the ground of public policy. To this class belong marriage brokerage contracts (*q. v.*) and the following kinds of transactions—

§ 10. **Fraud on third persons.**—Fraud on third persons exists where one enters into an arrangement with or incurs

an obligation to another, and at the same time, or afterwards, does an act without his knowledge by which the benefit of the arrangement or obligation is partly or wholly destroyed. The following are instances—

§ 11. **Fraud on creditors.**—If an insolvent debtor enters into an arrangement with the general body of his creditors, by which they accept a proportion of their debts in satisfaction of the whole, and the debtor, or any person on his behalf, in order to procure the consent of some particular creditor, secretly promises him an advantage over the others, this agreement is void as being “in fraud of creditors.” Chit. Cont. 634; Poll. Cont. 224; Leake Cont. 403.

§ 12. **Fraud on marital rights.**—If a woman entitled to property enters into a contract for marriage, and during the treaty secretly conveys away the property in such a manner as to defeat the intended husband’s marital right and secure to herself the separate use of it, and the concealment continues until the marriage, the conveyance is voidable, at the suit of the husband, as being a fraud on his marital rights, even if he was ignorant of the existence of the property. 1 White & T. Lead. Cas. 364; Snell Eq. 319; Poll. Cont. 231.

§ 13. **Fraud on power.**—A person to whom a power of appointment is given must exercise it *bonâ fide* for the end designed by the donor, otherwise the appointment will be set aside on the ground that it is what is termed a fraud on the power. (*Aleyn v. Belchier*, 1 Eden 132; 1 White & T. Lead. Cas. 339.) Thus, if a parent having a power of appointing an estate to any of his children, appoints it to one upon a previous bargain with that child that he should pay the father a consideration for it, the court will set aside the appointment. (*Ib.*; *McQueen v. Farquhar*, 11 Ves. 467.) So it seems, that if a power is given to a person to appoint by will only, a covenant by him to exercise it in a particular way is void, being a fraud on the power. *Palmer v. Locke*, 15 Ch. D. 294.

§ 14. **Fraud on the public.**—An act may be a fraud on the public. On this

principle, an agreement to publish a work under a misleading title will not be enforced by the court. *Post v. Marsh*, 16 Ch. D. 395.

§ 15. **Fraud on a statute.**—An act is sometimes said to be a fraud on a statute when it is an evasion of its provisions. For example, A. sold a patent to B. in consideration of B. paying him royalties; B. at the same time lent A. £12,500, and it was agreed that B. should retain one-half of the royalties, as they became payable, towards satisfaction of the debt; provided, that if A. became bankrupt B. might retain the whole of the royalties in satisfaction of the debt. This proviso was held to be a fraud upon the bankruptcy laws, and void. *Ex parte Mackay*, L. R. 8 Ch. 643. "*Contra legem facit, qui id facit quod lex prohibet; in fraudem vero, qui salvis verbis legis sententiam ejus circumvenit.*" "*Fraus enim legi fit, ubi quod fieri noluit, fieri autem non vetuit, id fit.*" Dig. i. 3, fr. 29, 30.

§ 16. **Statutory fraud.**—Certain acts are made frauds by statute. Thus, by the English Companies Act, 1867, a prospectus which does not comply with the requirements of the act in specifying all contracts entered into by the company, or the promoters, trustees or directors thereof, before the issue of the prospectus, is to be deemed fraudulent. (30 and 31 Vict. c. 131, § 38. As to the remedy of the person defrauded, see *Grover's Case*, 1 Ch. D. 182.) This is an instance of "legal" fraud, in which proof of fraudulent intention is not required. *Supra*, § 6, and see FRAUDULENT CONVEYANCES; FRAUDULENT PREFERENCE.

§ 17. **Effect of fraud.**—The effect of fraud may be said in general to be to entitle the injured person to avoid the transaction induced by the fraud (*e. g.* in the case of a contract, to have it rescinded), or to recover damages for the injury. (See DECEIT.) It gives rise to a defence to any action brought by the fraudulent party to enforce the contract or other transaction, but it does not make it void *ab initio*. (See Chit. Cont. 628; *Oakes v. Turquand*, L. R. 2 H. L. 325; *Broom Com. L. 335 et seq.*; *Urquhart v. Macpherson*, 3 App. Cas. 831. As to actions to set aside judgments, &c., obtained by fraud, see *Flower v. Lloyd*, 6 Ch. D. 297; 10 Ch. D. 327; *Dan. Ch. Pr.*

1428; *In re Pinto Silver Mining Co.*, 8 Ch. D. 273.) In some cases an act is both a fraud on A. and also wrongful against B., as in the case of the wrongful use of trade marks and trade names (*q. v.*) But an agreement in fraud of third persons, or one which is fraud on a statute, or on the public, is void *ab initio*, and not merely voidable. *Leake Cont. 766. See VOID; VOIDABLE.*

§ 18. **Criminal law.**—Certain frauds are also dealt with by the criminal law, and constitute misdemeanors. Such are frauds committed by public officers in discharge of their duties and affecting the public (*Steph. Cr. Dig. 73*), frauds committed by trustees, directors and other officers. (*Id. 260 et seq.*) Also, cheats, and swindling by false pretences (*q. v.*)

FRAUD, (defined). 61 Ill. 372; 39 Ind. 77; 4 Park. (N. Y.) Cr. 161; 9 Wend. (N. Y.) 187; 2 East 92, 108; 2 Chit. Pl. 392.

—(what constitutes). *Baldw. (U. S.) 331, 337*; 5 Ala. 596, 601; 6 Mass. 339; 6 Halst. (N. J.) 295, 310; 7 Wend. (N. Y.) 9, 20; 2 Burr. 931, 938; 1 Russ. 485, 493; 12 Ves. 321, 324.

—(effect of). 12 Pet. (U. S.) 11.

—(synonymous with "covein," "collusion" and "deceit"). 4 Bac. Abr. 381.

—(sale procured by). 1 Hill (N. Y.) 302, 311; 39 How. (N. Y.) Pr. 172.

—(in bankrupt act). 5 Otto (U. S.) 704; 16 Bankr. Reg. 116; 23 Hun (N. Y.) 448.

—(in a statute). 77 N. Y. 427, 429.

FRAUD, ACTUAL, (what is). *Story Eq. Jur. § 187.*

—(distinguished from "constructive"). 29 Conn. 588, *n.*; 13 Abb. (N. Y.) Pr. 405.

FRAUD AND FALSEHOOD, (necessary to support an action of false representation). *Holt 387.*

FRAUD, CONSTRUCTIVE, (what is). 35 Barb. (N. Y.) 444.

FRAUD, EXCEPT IN CASES OF, (in N. C. constitution, Art. 1, § 16). 72 N. C. 384.

FRAUD IN FACT.—See FRAUD, §§ 2-5.

FRAUD IN FACT, (distinguished from "fraud in law"). 7 Cow. (N. Y.) 301; 8 *Id.* 406, 438; 9 Johns. (N. Y.) 337; 7 Wend. (N. Y.) 436; 64 Pa. St. 352, 356; 10 Serg. & R. (Pa.) 84.

FRAUD IN LAW.—See FRAUD, §§ 6-16.

FRAUD OR FALSE SWEARING, (in insurance policy). 1 Hill (N. Y.) 71.

FRAUDS, STATUTE OF.—See STATUTE OF FRAUDS.

FRAUDULENT CONTRACT, (in divorce act, defined). 1 Day (Conn.) 111, 114.

FRAUDULENT CONVEYANCE.—

§ 1. **Statute of Elizabeth**.—By Stat. 13 Eliz. c. 5, conveyances of landed estates or of goods, made for the purpose of delaying, hindering or defrauding creditors, were declared void as against them unless made for valuable consideration and *bonâ fide* to a person not having notice of the fraud. (Wms. Real Prop. 76; Wats. Comp. Eq. 270; Twyne's Case, 3 Co. 80; 1 Sm. Lead. Cas. 1; Robs. Bankr. 113. See VOLUNTARY.) This statute, together with 27 Eliz. c. 4, and 29 Eliz. c. 18, on the same subject, have been adopted in the United States, and form the ground-work of the various State statutes as to fraudulent conveyances.

§ 2. **Bankruptcy Act**.—By the English Bankruptcy Act, 1869, a fraudulent conveyance, gift, delivery or transfer by a debtor of his property or any part thereof, is an act of bankruptcy (*q. v.*), (Sect. 6, § 2,) by "fraudulent" is meant that the conveyance is one which tends to defeat or delay the creditors. See Robs. Bankr. 116. See, also, ACT OF BANKRUPTCY, § 3; FRAUDULENT PREFERENCE.

FRAUDULENT CONVEYANCE, (what is). 1 Halst. (N. J.) 450, 473.

— (in a statute). 3 Mass. 487.

FRAUDULENT CONVEYANCE, GIFT, DELIVERY, OR TRANSFER, (in bankruptcy act). L. R. 8 Ex. 26.

FRAUDULENT PREFERENCE.—

The English doctrine of fraudulent preference has for its object to prevent a debtor on the eve of bankruptcy from making a voluntary distribution of his property amongst his creditors, so as to defeat the distribution which is contemplated by the bankrupt laws. (Robs. Bankr. 125.) Accordingly, every conveyance of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by an insolvent person in favor of any creditor with a view of giving that creditor a preference over the others, will, if the insolvent becomes bankrupt within three months after the conveyance, payment, &c., be deemed fraudulent and void as against the trustee in bankruptcy. (Bankr. Act, 1869, § 92.) The doctrine of fraudulent preference also applies to insolvent companies. Companies Act, 1862, § 164.

FRAUDULENTLY, (equivalent to "feloniously"). 42 Tex. 345, 347.

— (in an indictment). 15 Wend. (N. Y.) 282.

FRAUDULENTLY OR CLANDESTINELY, (in a statute). 12 Serg & R. (Pa.) 217 218.

FRAUNC, or FRAUNKE FERME.—See FRANKFERM.

FRAUNCHISE.—A franchise (*q. v.*)

FRAUS.—Fraud (*q. v.*) And see DOLUS.

FRAUS DANS LOCUM CONTRACTUI.—A misrepresentation or concealment of some fact that is material to the contract, and had the truth regarding which been known the contract would not have been made as made, is called a "*fraus dans locum contractui*," i. e. a fraud occasioning the contract, or giving place or occasion for the contract.

Fraus est celare fraudem (1 Vern. 270): It is fraud to conceal fraud.

Fraus est odiosa et non præsumenda (Cro. Car. 550): Fraud is odious and not to be presumed.

Fraus et dolus nemini patrocinar debent (3 Co. 78): Fraud and deceit ought not to benefit any person.

Fraus et jus nunquam cohabitant (Wing. 680): Fraud and justice never dwell together.

Fraus latet in generalibus: Fraud lies hid in general expressions.

FRAUS LEGIS.—Fraud of law; using legal proceedings with a felonious purpose.

Fraus meretur fraudem (Plowd. 100): Fraud merits fraud.

FRAXINETUM.—A wood of ash trees. Co. Litt. 4 b.

FRAY.—See AFFRAY.

FRECTUM.—Freight.—Blount.

FRED.—Peace.

FREDSTOLE, or FRIDSTOL.—Sanctuaries; seats of peace.—Gibs. Camden.

FREDUM.—A composition anciently paid by a criminal to be freed from prosecution, of which the third part was lodged in the Exchequer. See Montes. Sp. Laws l. 30, c. 20.

FREDWIT, or FREDNITE.—A liberty to hold courts and make ameracements.—Cowell.

FREE.—Not bound to servitude; independent; certain and honorable, as opposed to base. See CHAPEL, § 2; FISHERY, § 8; SERVICE; SOCAGE; WARREN. As to free miners, see GALE.

FREE, (in a covenant). 5 Halst. (N. J.) 20, 34.

FREE ALMS.—"Free alms is where in ancient times lands were given to an abbot and

his covent, or to a dean and his chapter, and to their successors, in pure and perpetual alms, without expressing any service certain: this is *frankalmoigne*; and such are bound before God to make oraisons and prayers for the donor and his heirs, and therefore they do no fealty; and if such as have lands in *frankalmoigne* perform no prayers nor divine service for the souls of the donors, they shall not be compelled by the donors to do it, but the donors may complain to the ordinary, praying him that such negligence be no more, and the ordinary of right ought to redress it."—*Termes de la Ley*.

FREE AND CLEAR, (in a covenant). 4 Yeates (Pa.) 386.

FREE AND CLEAR OF ALL INCUMBRANCES, (in a contract for the sale of land). 2 Greenl. (Me.) 22.

FREE AND CLEAR OF ALL RATES, TAXES AND DEDUCTIONS WHATSOEVER, (in a statute). 3 Barn. & C. 863, 869.

FREEBORD.—Land claimed in some places, more or less beyond or without the fence—said to be two feet and a half. Mon. Ant. t. 2, p. 141.

FREE BOROUGH MEN.—Such great men as did not engage, like the frankpledge men, for their decennier.—*Jacob*.

FREE BURGESS, (who is). 4 Dowl. & Ry. 427, 430; 7 Id. 777.

FREE CHAPEL.—A place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. 1 Burn Eccl. L. 298. See CHAPEL, § 2, subd. (3).

FREE COMMONERS, (horses, when so called). 2 Mich. 259, 264.

FREE COURSE.—A vessel having the wind from a favorable quarter is said to sail on a "free course."

FREE ENTRY, EGRESS AND REGRESS.—An expression used to denote that a person has the right to go on land again and again as often as may be reasonably necessary. Thus, in the case of a tenant entitled to emblements (*q. v.*) after the expiration of his tenancy, the law "giveth him a speedy remedy to enter into the land, and to take and carry [the crop] away, and compelleth not him to take it at one time, or to carry it before it be ready to be carried; and therefore the law giveth all that is convenient, viz., free entry, egress and regress as much as is necessary." Co. Litt. 56a. For other instances, see Litt. § 69.

FREE FISHERY.—A royal franchise, being the exclusive right of fishing in a public river. Grants of this description cannot now be made in England, the Great Charter and its confirmations prohibiting it. See FISHERY, § 8.

FREE FISHERY, (defined). Ang. Waterc. § 75.

FREE FOLD is said to be the same as foldage or faldage (*q. v.*) (Elt. Com. 45), but it would seem to denote the right of the tenant to have his sheep folded by the lord, rather than the right of the lord to have the tenant's sheep on his land.

FREE FROM AVERAGE, EXCEPT GENERAL, (in a policy of insurance). 9 Serg. & R. (Pa.) 115, 120.

FREE FROM AVERAGE, UNLESS GENERAL, (in a policy of insurance). 16 East 214 n.

FREE MY SLAVES, (in a will). 2 Yerg. (Tenn.) 123.

FREE OF ALL INCUMBRANCES, (in a covenant). 4 Mass. 627; 17 Id. 586.

FREE OF PARTICULAR AVERAGE, (in a policy of insurance). 15 East 559.

FREE ON BOARD A FOREIGN SHIP, (in a contract). 3 Campb. 270.

FREE PLEDGE.—See FRANKPLEDGE.

FREE SERVICES.—Such as were not unbecoming the character of a soldier or a freeman to perform, as to serve under his lord in the wars, to pay a sum of money, or the like. 2 Bl. Com. 60, 61. See SERVICE.

FREE SHIPS.—In international law, neutral ships. The phrase "free ships shall make free goods," is often inserted in treaties, meaning that goods, even though belonging to an enemy, shall not be seized or confiscated, if found in neutral ships. Wheat. Int. L. 507 *et seq.*

FREE SOCAGE.—See SOCAGE.

FREE-WARREN.—A royal franchise, granted by the crown to a subject for the preservation or custody of beasts and fowls of warren. See WARREN.

FREE WILL AND PLEASURE, (in an indictment). 4 Campb. 189.

FREEBENCH.—An estate which, by the custom of most manors, the widow of a copyholder has in the land of which her husband was tenant. The nature and duration of the estate, and the quantity of the lands to which it extends, vary according to the particular custom, but in many points freebench closely resembles dower (*q. v.*) Although the Dower Act does not apply to copyholds, the widow's right to freebench is in most manors subject to any alienations of the land made by the husband, whether *inter vivos* or by will; it is, however, paramount to his debts. Wms. Real Prop. 386.

§ 2. **Man's freebench**.—In some places the widower of a female copyholder has by custom an estate in his wife's lands, analogous to an estate by the curtesy in freeholds, and called his "man's freebench" or customary curtesy. (Elt. Copyh. 146. See CURTESY.) The right to freebench is enforced by an action similar to an action of dower. C. L. P. Act, 1860, § 26. See DOWER, § 5.

FREEDMAN.—In the Roman law, one who was emancipated from a state of bondage; a manumitted slave. The word is used in the same sense in the United States, respecting negroes who were formerly slaves.

FREEDOM.—The condition of one to whom the law attributes the single individual right of personal liberty, limited only, in the domestic relations, by powers of control which are associated with duties of protection.—*Bouvier*.

FREEDOM OF DELIBERATION, SPEECH AND DEBATE, (in constitution). 4 Mass. 1.

FREEHOLD.—

§ 1. Freehold originally meant an estate held by a freeman, as opposed to "villeinage" (*q. v.*) (Bract. 224 a; Britt. 83 b.) It seems to have been originally used in much the same sense as seisin (*q. v.*), *i. e.* the feudal possession of land. Thus, in the old books, a distinction is drawn between freehold in deed and freehold in law. Where a man dies seised of land so that it descends to his son, then until the son enters on the land he has only a freehold in law, which, however, is sufficient to entitle his wife to dower if he dies before entry. (Litt. §§ 448, 681; Co. Litt. 31 a, where it is called seisin in law.) This term is applied to interests in land in two senses, either to denote the quality of an estate, or to denote the tenure by which the land is held.

§ 2. **Freehold in quality.**—With reference to the quality of an estate, "every one which hath an estate in any lands or tenements, for term of his owne life or another man's life, is called tenant of freehold, and none other of a lesser estate [*e. g.* a tenant for years] can have a freehold; but they of a greater estate have a freehold; for he in fee-simple hath a freehold, and tenant in taile hath a freehold," &c. (Litt. § 57.) Hence estates of freehold are opposed to estates for years and other chattel interests. Co. Litt. 43 b. See ESTATE, §§ 4, 5; INTEREST.

§ 3. **Freehold descendible.**—In the old writers freehold is used generally to denote an estate for life as opposed to a reversion. (Litt. § 302.) An estate of freehold descendible is an estate given to A.

and his heirs or the heirs of his body during the life of B. 2 Bl. Com. 259; 1 Steph. Com. 450. See OCCUPANCY; QUASI-TAIL.

§ 4. **Freehold in tenure.**—With reference to its tenure, land is said to be freehold when it is held by socage tenure (or by knight's service or other military tenure when those tenures existed), as opposed to land held by villeinage or customary tenures, such as copyhold land. (Co. Litt. 43 b. See SERVICE; TENURE.) Where two persons enter into a contract for the purchase and sale of land, whether in fee-simple or otherwise, they are presumed to intend freehold land unless the nature of its tenure appears, and therefore if it turns out to be copyhold the purchaser cannot be compelled to carry out the contract, unless the tenure is in reality equivalent to freehold. Dart Vend. 115, 138, 1073. See CUSTOMARY FREEHOLDS; SEISIN.

FREEHOLD IN LAW.—See FREEHOLD, § 1.

FREEHOLD, (defined). 1 Pres. Est. 199.

FREEHOLD, COPYHOLD, AND LEASEHOLD MESSAGES, (in a will). 1 Meriv. 450.

FREEHOLD ESTATE, (in a will). 3 Barn. & Ad. 473; 1 Brod. & B. 72; 2 Pres. Est. 114.

FREEHOLD HOUSE, (in a will). L. R. 8 Ch. 171; L. R. 11 Eq. 454.

FREEHOLD LAND, (in a will). L. R. 4 Eq. 278; 6 Ves. 632, 642.

FREEHOLD LAND SOCIETIES.—See BUILDING SOCIETIES, § 6.

FREEHOLDER.—He who possesses a freehold estate. See CHOSEN FREEHOLDERS.

FREEHOLDER, (defined). 38 Mich. 85, 95; 75 N. C. 12, 13; 2 Watts (Pa.) 43, 48.

FREEHOLDER—HOUSEHOLDER, (in a statute). 15 Ind. 347.

FREELY, (in certificate of acknowledgment by a feme covert). 2 Barb. (N. Y.) Ch. 232; 20 Id. 371, 374; 4 Edw. (N. Y.) 70.

FREELY AND VOLUNTARILY, (in certificate of acknowledgment by feme covert). 4 Halst. (N. J.) 225, 233.

FREELY TO BE ENJOYED, (in a will). Cowp. 352.

FREELY TO BE POSSESSED AND ENJOYED, (in a will). 23 Wend. (N. Y.) 452; 12 Serg. & R. (Pa.) 55, 56; Cowp. 352; 11 East 220; L. R. 1 Q. B. 571; 2 Id. 269.

FREEMAN.—An allodial proprietor; one born or made free of certain municipal immunities and privileges. As to freemen in London, see 6 and 7 Vict. c. 18, § 20, and 2 Steph. Com. (7 edit.) 360 n.

FREEMAN, (who is). 6 Watts (Pa.) 553-557.

FREEMASONS.—Secret societies formed, as it is supposed, for the mutual assistance and the promotion of friendship and good fellowship. They are protected by law.

FREEMEN, (in constitution of Pennsylvania, Art. III., § 1). 9 Phil. (Pa.) 241.

FREEMEN AND FREEWOMEN, (in a statute). 1 Dall. (U. S.) 469, 470.

FREEMEN'S ROLL.—A list of all persons admitted burgesses, or freemen of those rights which are reserved by the English Municipal Corporation Act (5 and 6 Will. IV. c. 76), as distinguished from the burgesses newly created by the act, and entitled to the rights which it confers, who are entered on the burgess roll. See 6 and 7 Vict. c. 18.

FREIGHT.—DUTCH: *vragt* or *vracht*; OLD GERMAN: *frehtli*. earning, reward. Schmitthenner, D. Wortb.; Diez. Etym. Wortb.

§ 1. In general, and *pro rata*.—Strictly speaking, freight is the reward payable to a carrier by sea for the safe carriage and delivery of goods. (Maude & P. Mer. Sh. 268. *Per* Blackburn, J., in *Allison v. Bristol, &c., Co.*, 1 App. Cas. 228.) Hence in ordinary cases it does not become payable unless the voyage is completed and the goods carried to their destination, (Maude & P. Mer. Sh. 269;) but in some cases, where a part only of the voyage has been performed, freight is recoverable for that portion *pro rata* [*parte* or *portione*] *itineris peracti* (proportionally to the portion of the voyage performed); thus, if the consignee voluntarily accepts the goods at a point short of their destination in such a way as to raise a fair inference that the further carriage is intentionally dispensed with, a new contract will be implied to pay freight for that portion of the voyage which has actually been performed. *Id.* 272.

§ 2. Prepaid freight, or freight in advance.—When freight is prepaid, its nature differs considerably from that of ordinary freight, for it then ceases to be dependent on the safe delivery of the goods, (Maude & P. Mer. Sh. 269. "It is in effect money to be paid for taking the goods on board and undertaking to carry, not carrying them." *Per* Blackburn, J., *ubi supra*, p. 220,) and, therefore, if the goods are lost the shipowner is not liable to refund the prepaid freight. See the cases cited in *Allison v. Bristol, &c., Co.*, 1 App. Cas. 209.

See, further, as to the nature of freight, *Keith v. Burrows*, 2 C. P. D. 163; 2 App. Cas. 636.

§ 3. Enforcing right to freight.—In ordinary cases the shipowner has a right of action against the consignor, or sometimes also against the consignee, for the recovery of the freight, and also has a lien on the goods for the amount, unless he has entered into a contract inconsistent with or expressly waiving his right of lien.

§ 4. Dead freight is money payable by a person who has chartered a ship and only partly loaded her, in respect of the loss of freight caused to the shipowner by the deficiency of cargo. *McLean v. Fleming*. L. R. 2 Sc. & D. 128. See AFFREIGHTMENT; BILL OF LADING; CHARTER-PARTY; LIEN.

FREIGHT, (defined). 2 Allen (Mass.) 86, 91; 10 Gray (Mass.) 109, 112; 3 Pick. (Mass.) 20; 4 *Id.* 429, 435; 1 Binn. (Pa.) 405, 414; 5 Wheel. Am. C. L. 512 n.

—— (charter money cannot be insured as). 1 Hall (N. Y.) 471.

—— (in a bottomry bond). 3 Mas. (U. S.) 344.

—— (in charter-party). 2 Brod. & B. 410, 428.

—— (in a contract of assignment). 1 Mas. (U. S.) 9, 12.

—— (in insurance policy). L. R. 7 C. P. 341; 1 Man. & Ry. 157.

FREIGHT FREE, (in bill of lading). 4 Wash. (U. S.) 110.

FREIGHT MONEY, (in verdict of a jury). 100 Mass. 515, 517.

FREIGHT SETTLED HERE, (in bill of lading). 8 Wheat. (U. S.) 605, 637.

FREIGHT THEN PENDING, (broader than "freight due or to grow due"). 1 Sprague (U. S.) 219, 224.

FREIGHTER.—The charterer of a vessel, who loads her. He who loads a general ship. 3 Kent Com. 173.

FRENCHMAN.—In early times this term was applied to every stranger or outlandish man. Bract. lib. 3, tr. 2, c. 15. See FRANCIGENA.

FRIENDLESMAN.—See FRIENDLESS MAN.

FRIENDWITE, or FRENDRITE.—A fine exacted of him who harbored an outlawed friend.—Blount; Cowell.

FREOBORGH.—A free-surety, or free-pledge.—*Spel. Gloss.* See FRANKPLEDGE.

Frequentia actus multum operatur (4 Co. 78): The frequency of an act operates much.

FRERE.—A brother. Britt. c. 75.

FRESCA.—Fresh water.—*Cowell.*

FRESH.—Recent; new. In this sense the word occurs in the following phrases—

FRESH DISSEISIN.—That disseisin which a person might formerly seek to defeat of himself, and by his own power, without resorting to the law; as where it was not above fifteen days old, or of some other short continuance. Britt. c. v.

FRESH-FINE.—A fine that has been levied within a year. Stat. Westm. II. c. 45.

FRESH-FORCE.—A force (*i. e.* deforcement or disseisin) newly done in any city, borough, &c.—*F. N. B.* 7; *O. N. B.* 4.

FRESH PURSUIT, (what is). 27 Cal. 572.

FRESH SUIT.—

§ 1. If a person is robbed of goods, and makes fresh suit, *i. e.* immediately follows and apprehends the thief, he shall have his goods again, notwithstanding the thief may have thrown them away, so that if it were not for the fresh suit they would become waifs (*q. v.*) 2 Steph. Com. 547.

§ 2. In the law of distress, if the landlord comes to distrain and sees the tenant's cattle on the land, and the tenant, to prevent the distress, drives the cattle off the land, then if the lord makes fresh suit, he may distrain the cattle, although they are not on the land which the tenant holds of him. Co. Litt. 161 a.

FRESH TAXES, (what are). 3 Barn. & Ald. 647, 651.

FRESHET, (in an award). 9 R. I. 99.

FRETTUM.—The freight of a ship; freight money.—*Cowell.*

FRETUM.—A strait.

FRETUM BRITANNICUM.—The strait between Dover and Calais.

FRIAR.—A member of an order of religious persons, of whom there were four principal branches, viz.: (1) Minors, Grey Friars or Franciscans; (2) Augustines; (3) Dominicans, or Black Friars; (4) White Friars, or Carmelites, from whom the rest descend.—*Wharton.*

FRIBOROUGH, FRIDBORG, or FRITHBORG.—The Norman term for frankpledge (*q. v.*)

FRIBUSCULUM.—In the civil law, a temporary separation between husband and wife.

FRIDHBURGUS.—A kind of frankpledge (*q. v.*)

FRIENDLESS MAN.—An outlaw; so called because he was denied all help of friends. Ract. lib. 3, tr. 2, c. 12.

FRIENDLY SOCIETIES.—

§ 1. Societies established in England to provide, by the voluntary subscriptions of their members, for the relief or maintenance of the members and their families during sickness or old age, or for the relief or maintenance of the widows and orphan children of deceased members, or similar objects. (Friendly Soc. Act 1875, § 8; F. S. Amendment Act, 1876.) Such societies have no legal status unless they are registered in pursuance of one of the Friendly Societies Acts. (For a history of the legislation on the subject, see Appendix I. to the Fourth Report of the Friendly Soc. Comm. See REGISTER.) Every registered society has one or more trustees in whom its property is vested, (Act of 1875, §§ 14, 16,) and who in ordinary cases take and defend legal proceedings on its behalf. (§ 21.) It must be regulated by rules defining its objects, the mode of holding meetings, the rates of the subscriptions and of the allowances during sickness and on death, the investments in which the funds are to be placed, &c., &c. § 13; Dav. F. Soc. 26, and the form of rules, 247.

§ 2. **Limit of amount.**—Friendly societies are intended for the encouragement of the frugal and industrious poor, and the legislature has therefore limited the amount to which any person can become entitled by being a member of one or more societies, to £200 by way of gross sum, and £50 a year by way of annuity. Dav. F. Soc. 118; F. S. Act, 1875, § 27.

§ 3. **Deposit societies—Dividing societies.**—Friendly societies are of numerous varieties (See Fourth Report of the Commissioners on F. S. xxiv.), but the only two requiring mention are deposit societies and dividing societies. A deposit society combines the functions of a savings bank with those of a friendly society, in a manner too complicated to be here described. (*Id.* lxxxiii.; Dav. F. Soc. 53.) A dividing society is one which periodically divides its funds among its members; the simplest plan being for the members to subscribe a fixed sum weekly or monthly, receiving in return certain benefits in case of sickness or death during the current year, at the end of which period the surplus funds are divided among the members. Dav. F. Soc. 55; Fourth Report, lxxii.

§ 4. **Societies with branches.**—A society with branches is one in which the members are divided into branches or groups, each having a separate fund administered by itself, although they are all under the control of a central body. (F. S. Act, 1875, § 4.) These are sometimes called "affiliated societies." Fourth Report of Comm. xxv. See BENEVOLENT SOCIETIES; BUILDING SOCIETIES; CATTLE INSURANCE SOCIETIES; DISSOLUTION, § 4; INDUSTRIAL AND PROVIDENT SOCIETIES; NOMINATION; WORKING MEN'S CLUBS.

FRIENDLY SUIT.—(1) A suit brought by a creditor in chancery against an executor or administrator, being really a suit by the executor or administrator, in the name of a creditor against himself, in order to compel the creditors to take an

equal distribution of the assets. (2 Wms. Ex. (7 edit.) 1915.) (2) Any suit instituted by agreement between the parties to obtain the opinion of the court upon some doubtful question in which they are interested, such as actions for construction of wills, partition suits, &c.

FRIENDS, (as meaning "relations"). 5 Com. Dig. 336.

FRIENDS, SOCIETY OF.—See QUAKERS.

FRIGIDITY.—Impotence.—*Johnson*.

FRILING, or FREOLING.—A free-man born.—*Jacob*.

FRISCUS.—(1) Fresh uncultivated ground.—*Mon. Angl.* tit. 2, p. 56. (2) Fresh; not salt.—*Reg. Orig.* 97. (3) Recent or new. See FRESH, and subsequent titles.

FRITHBORG.—Frankpledge.—*Cowell*.

FRITHBOTE.—A satisfaction or fine for a breach of the peace. See FREDUM.

FRITHBREACH.—The breaking of the peace.—*Cowell*.

FRITHGAR.—The year of jubilee, or of meeting for peace and friendship.—*Jacob*.

FRITHGILDA.—Guildhall; a company or fraternity for the maintenance of peace and security; also, a fine for breach of the peace.—*Jacob*.

FRITHMAN.—A member of a company or fraternity.—*Blount*.

FRITHSOEN, or FRITHSTOL.—An asylum; a sanctuary.

FRITHSOKE—FRITHSOKEN.—The right of liberty of having a view of frankpledge.—*Fleta*.

FRITHSPLOT, or FRITHGEARD.—A spot or plot of land, encircling some stone, tree or well, considered sacred, and, therefore, affording sanctuary to criminals.—*Wharton*.

FRIVOLOUS, (not synonymous with "irrelevant"). 5 Abb. (N. Y.) Pr. n. s. 338, 343; 53 Barb. (N. Y.) 650.

FRIVOLOUS ANSWERS, or PLEAS.—These are pleas which are clearly insufficient upon the face of them, and are generally (when at all) put in for purposes of delay, or to embarrass the plaintiff. They may, on motion, be ordered to be at once struck out, *secus*, if

the plea is not manifestly frivolous on the face of it.

FRIVOLOUS ANSWER, (in pleading, defined). 3 Sandf. (N. Y.) 732.

—— (distinguished from "sham answer"). 1 Abb. (N. Y.) Pr. 41; 1 Duer (N. Y.) 649; 8 How. (N. Y.) Pr. 149.

FRIVOLOUS DEMURRER, (defined). 40 Wis. 555, 558.

FRIVOLOUS NOTICE, (in procedure, what is). 1 Hill (N. Y.) 663.

FRODMORTEL, or FREOMORTEL.—An immunity for committing manslaughter. *Mon. Ang. tom.* 1, p. 173.

FROM, (in computation of time). 2 Browne (Pa.) 18; 3 Serg. & R. (Pa.) 496; 15 *Id.* 135, 137; 6 Watts & S. (Pa.) 327, 328; 24 Barb. (N. Y.) 9; 2 Cow. (N. Y.) 518, 605, 606 n.; 6 *Id.* 659; 5 Wheel. Am. C. L. 209; 8 *Id.* 145; Dyer 218 b; 3 East 407; 3 T. R. 623; 1 Chit. Gen. Pr. 774; 2 *Id.* 148; 7 Com. Dig. 397; 4 Cruise Dig. 59.

—— (in a demise). 12 R. I. 319.

—— (in a fire policy). L. R. 5 Ex. 296.

—— (in a statute). 7 Barb. (N. Y.) 416.

—— (in statute regulating descents). 4 Ind. 51.

—— (is a word of exclusion). 18 Me. 106, 108; 120 Mass. 94, 95; Leach C. C. 528.

FROM A PORT, SAILING, (means "sailing out of the port"). 2 Mas. (U. S.) 129.

FROM A STREET, (meaning of). 74 Pa. St. 259, 261.

FROM AND AFTER, (in a statute). 9 Cranch (U. S.) 104; 1 Nott. & M. (S. C.) 505; Alc. & N. 375.

—— (in a will). 2 Meriv. 361, 386.

—— (in articles of copartnership). 1 Anstr. 245.

FROM AND AFTER PAYMENT, AND SUBJECT THERETO, (in a will). L. R. 2 Ch. 644, 647.

FROM AND AFTER THE PASSAGE OF THE ACT, (in a statute). 1 Paine (U. S.) 261.

FROM AND AFTER THE PASSING OF THE ACT, (in a statute). 4 T. R. 660; 5 Com. Dig. 320.

FROM AND AFTER THE 30TH OF JUNE, (in a statute). 3 Cranch (U. S.) 399, 414.

FROM AND AT, (in a statute). 3 Cranch (U. S.) C. C. 599, 608.

FROM AND THROUGH, (in a description of a highway). 6 Car. & P. 133.

FROM AND UNTO, (when applied to place). Stark. Cr. Pl. 70.

FROM CHARLESTON, (in a railroad charter). 8 Rich. (S. C.) L. 177.

FROM DAY TO DAY, (an adjournment). 4 Watts (Pa.) 363.

FROM HENCEFORTH, (in an indenture). 4 Barn. & C. 272, 278; 5 Co. 1.

—— (in a lease). 4 Barn. & C. 908, 911.

FROM NASHVILLE, (in railroad charter). 3 Head. (Tenn.) 596.

FROM ONE TO THREE THOUSAND BUSHELS OF POTATOES, (in an agreement). 4 Me. 497.

FROM OR AFTER, (in computation of time). 2 Wall. (U. S.) 177.

FROM OR TO, (in a deed, excludes the terminus referred to). 52 Me. 252.

FROM PLACE TO PLACE, (in a statute). 11 Gray (Mass.) 81; 7 Mass. 158.

FROM PORT TO PORT, (in a policy of insurance). 1 Bouv. Inst. 486.

FROM SHIP OR WAREHOUSE, (in a contract). 1 Marsh. 287, 292.

FROM THE DATE, (synonymous with "from the day of the date"). 33 Me. 67, 71; 1 Pick. (Mass.) 485, 494; 1 Hayw. (N. C.) 114, 116.

—— (not synonymous with "from the day of the date"). 4 Wheel. Am. C. L. 131; Ld. Raym. 1241, 1242.

—— (in a bond). 15 Serg. & R. (Pa.) 135.

—— (in a deed). 4 Wash. (U. S.) 232, 240.

—— (in a lease). 1 Ld. Raym. 84, 85.

FROM THE DOING OF AN ACT, (in computation of time). 1 Ld. Raym. 480.

FROM THE EXPIRATION OF THE POLICY, (in a policy of insurance.) 2 Mass. 318, 327.

FROM THE FIRST DAY, (in a lease). 7 Allen (Mass.) 487; 9 Wend. (N. Y.) 346.

—— (is exclusive). Anth. (N. Y.) 243.

FROM THE LOADING, (in a marine policy). L. R. 7 Q. B. 702.

FROM THE PART OF THE FATHER, (in a statute). 1 Serg. & R. (Pa.) 222, 225.

FROM THENCEFORTH, (in a statute). 16 East 305; 2 Meriv. 431.

FROM TIME TO TIME, (in marriage settlement). 12 Ves. 501.

—— (in power to appoint). 1 Ves. 189.

—— (in railway act). L. R. 5 Ex. 6.

FROM TIME TO TIME FOR TWELVE MONTHS, (in a bond). 6 East 507.

FROM WHOM SUCH ESTATE CAME OR DESCENDED, (in statute of descents). 2 Pet. (U. S.) 58, 86.

FRONT, (in covenant to keep up sidewalks). 31 Iowa 89.

FRONT AND REAR, (in a contract). 10 Paige (N. Y.) 386.

FRONT OF THE STREET, (in a covenant). 7 Dowl. & Ry. 556, 563.

FRONT TO THE RIVER, (in a deed). 6 Mart. (La.) 19; 8 Id. 572; 9 Id. 656, 688; 2 Am. L. J. 421; 2 Wheel. Am. C. L. 497.

FRONTAGE—FRONTAGER.—In English law, a frontager is a person owning or occupying land which abuts on a highway, river, sea-shore, or the like. The term is generally used with reference to the liability of frontagers on streets to contribute towards the expense of paving, draining or other works on the highway carried out by a local authority, in proportion to the frontage of their respective tenements. (Public Health Act, 1875, § 150.) There is no liability at common law binding a frontager on the sea to maintain a sea-wall on his land. (*Hudson v. Tabor*, 1 Q. B. D. 225.) It is also used with reference to rights of access (*q. v.*) The corresponding American term is "abutting owner."

FRONTING, ADJOINING, OR ABUTTING, (in public health act). 5 C. P. D. 248; 1 Ex. D. 436.

FRUCTUARIUS.—He who has the use of the fruits, profits or yearly increase of land or beasts; a lessee or fermor.

FRUCTUS.—Fruit; the increase or natural production of a thing; also, the increase or profits produced by human skill, as well as those coming in the course of nature. Again, the word includes the right to the use of increase or fruits, *i. e.* the usufruct in them; also, rent for the use of a thing.

Fructus augent hæreditatem (D. A. 3, 20, 31): The yearly increase enhances an inheritance.

FRUCTUS CIVILES.—Compensation for the use or enjoyment of a thing.

FRUCTUS INDUSTRIALES, or INDUSTRIÆ.—Fruits of industry; crops; emblements. 2 Steph. Com. 258.

FRUCTUS INDUSTRIALES, (what are). 40 Md. 212, 223.

FRUCTUS NATURALES.—Natural fruits, coming to man by the course of nature, unaided by his own exertions, such as metals, wool, milk, the young of animals, and the fruits of trees.

FRUCTUS PENDENTES.—Hanging fruits; fruits of a thing while united with the thing producing them. They are part of the principal thing, and are sometimes called *fructus stantes*, standing fruits.

FRUGES.—The produce of land; particularly of vines, underwood, chalk-pits and stone-quarries. Dig. 50, 16, 77.

FRUIT FALLEN.—The produce of any possession detached therefrom, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson.—*Wharton*.

FRUMENTUM.—Grain; corn. Dig. 50, 16, 77.

FRUMGYLD.—The first payment made to the kindred of a person slain, the recompense for his murder.—*Termes de la Ley*.

FRUMSTOL.—An original or paternal dwelling.—*Anc. Inst. Eng.*

FRUSCA TERRÆ.—Waste and desert lands.

FRUSSURA.—A breaking; ploughing.—*Cowell*.

FRUSTRA.—In vain; useless; to no purpose. Used in such maxims as the following—

Frustra agit qui judicium prosecui nequit cum effectu: He sues in vain who cannot prosecute his judgment with effect.

Frustra est potentia quæ nunquam venit in actum (2 Co. 51): That power is to no purpose which never comes into act.

Frustra feruntur leges nisi subditis et obedientibus: Laws are made in vain, except for those that are subject and obedient.

Frustra fit per plura, quod fieri potest per pauciora (Jenk. Cent. 68; Wing. 177): That is needlessly done by many [words] which can be done by less.

Frustra legis auxilium quærit qui in legem committit: Vainly does he who offends against law seek the help of law.

Frustra petis quod statim alteri reddere cogeris (Jenk. Cent. 256): You ask in vain that which you might immediately be compelled to restore to another. See CIRCUMSTANTIALITY OF ACTION.

Frustra probatur quod probatum non relevat (Halkerton 58): It is useless to prove that which, when proved, is not relevant to the question at issue.

FRUSTRUM TERRÆ.—A piece or parcel of land lying by itself. Co. Litt. 5 b.

FRUTECTUM, FRUTETTUM, or FRUTICETUM.—A place where shrubs or herbs grow.—*Jacob.*

FRYMITH—FYNMTH.—The affording harbor and entertainment to any one.—*Anc. Inst. Eng.*

FRYTHER.—A plain between woods. Co. Litt. 5 b.

FUAGE.—See FUMAGE.

FUDGE, (in a libel). 6 Car. & P. 245.

FUER.—Flight. It is of two kinds: (1) *fuere in fact*, or *in facto*, where a person does apparently and corporally flee; (2) *fuere in ley*, or *in lege*, when being called in the county court he does not appear, which legal interpretation makes flight.—*Wharton.*

FUERO.—In the Spanish law, a code, or compilation of laws. This word also signifies customs and usages having from their antiquity the force of law; special immunities and exemptions from taxes, &c.; charters of towns and cities; magisterial ordinances relating to fines, taxes, &c., and has many other unimportant meanings.

FUERO JUZGO.—A code of Spanish law, said to be the most ancient in Europe.

FUERO REAL.—A code of Spanish law promulgated by Alphonso the Learned, A. D. 1255.

FUERO VIEJO.—A compilation of Spanish law, published about A. D. 992.

FUGA CATTLE ALLORUM.—A drove of cattle.—*Blount; Fleta.*

FUGACIA.—A chase.—*Blount.*

FUGAM FECIT.—He has made flight. This was said of a person who is found by in-

quisition to have fled for felony, &c., upon which forfeiture of goods took place.

FUGATIO.—A privilege to hunt.—*Blount.*

FUGATORES CARRUCARUM.—Waggoners, who drive oxen without beating or goading. Fleta l. 2, c. lxxviii.

FUGITATION.—In Scotland, when a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the crown.—*Wharton.*

FUGITIVE'S GOODS.—Under the old English law, where a man fled for felony, and escaped, his own goods were not forfeited as *bona fugitivorum* until it was found by proceedings of record (e. g. before the coroner in the case of death) that he fled for the felony. Foxley's Case, 5 Co. 109 a. See FUGAM FECIT; WAIF.

FUGITIVE OFFENDERS, or FUGITIVES FROM JUSTICE.—

§ 1. In English law, a fugitive offender is a person who, being accused of committing a crime in one part of the British dominions, has left that part and gone to another. The Fugitive Offenders Act, 1881, contains provisions for the apprehension and return of such persons. See BACKING A WARRANT.

§ 2. In American law, a fugitive from justice is one who, having committed a crime in one jurisdiction, flees therefrom into another jurisdiction, in order to escape punishment. See EXTRADITION.

FUGITIVES FROM JUSTICE, (defined). 1 Hill (S. C.) 327; 10 Serg. & R. (Pa.) 125.

— (who are). 106 Mass. 227; 5 Binn. (Pa.) 617.

— (surrender of). 4 Johns. (N. Y.) Ch. 106; 9 Wend. (N. Y.) 212.

FULFILL, (in a letter of credit). 2 Day (Conn.) 358, 362.

FULFILLING, (in a will). 2 P. Wms. 158, 161.

FULL, (synonymous with "complete"). 22 Ala. 817.

FULL AGE.—Twenty-one years. A man is competent in law to do anything as a person of full age on the day preceding his twenty-first birthday, because the completion of the twenty-first year is supposed to belong as much to the day before as to the day after the imaginary interval at which it takes place. In one or two of the United States, a woman is of full age at eighteen years.

FULL AND COMPLETE CARGO, (in charter-party). 1 C. P. D. 155; L. R. 2 Ex. 335.

FULL BLOOD, or WHOLE BLOOD.—See BLOOD, § 2.

FULL CONFIDENCE, (in a will). 8 Ch. D. 540.

FULL COURT.—The court in banc, composed of all the judges sitting together. In English law, the judge ordinary, with two other members of the Court for Divorce and Matrimonial Causes, constituted the court of appeal, and in some instances the original jurisdiction, under the name of the "full court." *See, now, Jud. Act, 1873, § 44.*

FULL DEFENCE.—The formula of defence in a plea stated at length and without abbreviation. Thus: "And the said C. D., by E. F., his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," &c.—*Burrill*.

FULL FAITH AND CREDIT, (in United States constitution). 7 Cranch (U. S.) 431; 9 Pet. (U. S.) 86; 1 Pet. (U. S.) C. C. 74, 78, 155, 157; 9 Mass. 462; 2 Pick. (Mass.) 448.

FULL, IN, (in a receipt). 4 Car. & P. 149.

FULL PROOF.—*See* PLENA PROBATIO.

FULL SUPPLY, (in a contract). 69 N. Y. 45, 52.

FULL WAGES, (in laws of Oleron, meaning of). 1 Wash. (U. S.) 414.

FULLUM AQUÆ.—A fleam, or stream of water.—*Blount*.

FUMAGE, FUAGE, or FOUAGE.—A tax paid to the sovereign for every house that had a chimney. It is probable that the hearth-money, imposed by 13 and 14 Car. II. c. 10, took its origin hence. This hearth-money was declared a great oppression, and abolished by 1 W. & M. Stat. 1, c. 10; but a tax was afterwards laid upon all houses, except cottages, and upon all windows, by 7 Wm. III. c. 18. The window duty was repealed by 14 and 15 Vict. c. 36.—*Wharton*.

FUNCTION.—Employment; discharge of the duties of an office.

FUNCTIONARY.—A public officer, or employé. An officer of a private corporation is also sometimes so called.

FUNCTUS OFFICIO.—Having discharged his duty. An expression applied to an agent or donee of an authority who

has performed the act authorized, so that the authority is exhausted and at an end. Chit. Cont. 192; *Bedwell v. Wood*, 2 Q. B. D. 626.

FUND.—

§ 1. In its widest sense, a fund is a sum of money available for the payment or discharge of liabilities. Thus, the assets of a testator form a fund for the payment of his debts. (*See* BLENDED FUND.) So in England, the borough fund of a corporation is primarily liable for defraying the expenses of the borough. *See* BOROUGH, § 3.

§ 2. In its narrower and more usual sense, fund signifies capital, as opposed to interest or income; as where we speak of a corporation funding the arrears of interest due on its bonds, or the like, meaning that the interest is capitalized and made to bear interest in its turn, until it is repaid.

§ 3. **Funded and unfunded debt**.—The national debt of Great Britain is in part funded and in part unfunded, the former being that which is secured to the creditor or holder upon the public funds, the latter that which is not so provided for.* The unfunded debt is comparatively but of small amount, and is generally secured by exchequer bills and bonds (*q. v.*) The funded debt consists of annuities, as they are called, granted to those who originally advanced the money, being the right to receive an annual sum equal to interest at a certain rate on the principal advanced. The principal itself is not repayable, except at the option of the government. These annuities are charged on the consolidated fund (*q. v.*), and are themselves popularly called the public funds. They are a species of personal property, passing by transfer *inter vivos*, or on the death of the holder to his personal representatives. *See* the National Debt Act, 1870.

FUNDAMENTAL LAWS.—Constitutions, and other organic laws; laws which are the foundation of society, and which control and regulate the exercise of governmental power.

FUNDATIO.—A founding or foundation. *See* FOUNDATION.

FUNDATOR.—A founder (*q. v.*)

FUNDED DEBT, (in charter). 1 Edw. (N. Y.) 84.

*This is the explanation given in Stephen's Commentaries (ii. 574) and may be correct as applied to the English national debt. The term fund, however, is frequently used to signify the conversion of a temporary or floating debt into

one which is either perpetual or comparatively permanent. The change, therefore, of exchequer bills into government annuities would be the change of an unfunded into a funded debt.

FUNDI PATRIMONIALES.—Lands of inheritance.

FUNDING, (defined). 14 N. Y. 356, 367, 377.

FUNDITORES.—Pioneers.—*Jacob*.

FUNDS.—(1) Cash on hand: as, A. B. is in funds to pay my bill on him. (2) Stocks: as, A. B. has \$1000 in the funds. By public funds is understood the taxes, customs, etc., appropriated by the government for the discharge of its obligations.—*Bouvier*.

FUNDS, (rule where debt is payable from two). 7 Johns. (N. Y.) Ch. 184; 19 Johns. (N. Y.) 492; 1 Paige (N. Y.) 185; 6 *Id.* 521.

FUNDS, PHILADELPHIA, (in a note). 3 T. B. Monr. (Ky.) 8.

FUNDUS.—The bottom or foundation of a thing; from *fud*, *ῥυθ-ός*, *πυθ-μῆν*, the *n* in *fundus* being used to strengthen the syllable. *Fundus* is often used as applied to land, the solid *substratum* of all man's labors.—*Smith Dict. of Antiq.*

FUNERAL EXPENSES.—An executor or administrator should bury the deceased testator or intestate in a manner suitable to the estate he has left, and the expense of the burial will be allowed before all other debts and charges; but if the personal representative be extravagant, he commits a *devastavit*, for which he will be answerable to the creditors or legatees.—*Wharton*.

FUNERAL EXPENSES, (what are). 44 Miss. 124.

— (in act concerning sale of land of decedent). 14 Hun (N. Y.) 296.

FUNGIBLES RES.—A term applied in the civil law to things of such a nature as that they could be replaced by equal quantities and qualities, because *mutuā vice funguntur*, they replace and represent each other; thus, a bushel of wheat. A particular horse would not be *fungibles res*. Sand. Just. (5 edit.) 322.

FUNGIBLES.—Movable goods, which may be estimated by weight, number, or measure; such as corn, wine, or money.—*Wharton*.

FUR.—A thief. One who stole secretly or without force or weapons, as opposed to robber.

FUR, (in a policy of insurance). 7 Cow. (N. Y.) 202.

FURCA.—The gallows.—*Cowell*.

FURCA ET FLAGELLUM.—The gallows and whip. The meanest of all servile

tenures, when the bondman was at his lord's disposal, both life and limb.—*Cowell*.

FURCA ET FOSSA.—The gallows and pit. In ancient charters, a jurisdiction of punishing felons—the men by hanging, the women by drowning.—*Spel. Gloss.*; *Cowell*.

FURIGELDUM.—A mulct paid for theft.—*Jacob*.

Furiosi nulla voluntas est (D. 50, 17, 5; D. 1, 18, 13, § 1): A madman has no free will.

FURIOSITY.—In the Scotch law, madness, as distinguished from fatuity, or idiocy.

FURIOSUS.—A lunatic, or madman.

Furiosus absentis loco est. Non multum distant a brutis qui ratione carent (4 Co. 126): A madman is like a man who is absent. Those who want reason are not far removed from brutes.

Furiosus nullum negotium contrahere potest (D. 50, 17, 5): A madman can contract nothing.

Furiosus solo furore punitor (Co. Litt. 247): Let a madman be punished by his madness alone. Thus, in general, idiots and lunatics are not liable on contracts, and bear a certain analogy to infants. Chit. Cont. (11 edit.) 136.

Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit (4 Co. 126): A madman who knows not what he does cannot make a bargain, nor transact any business.

FURLONG.—ANGLO-SAXON: *furlang*; LOW LATIN: *furlongus, ferlingus, ferlingum*.

Quasi a furrow long, that is bounded or terminated by the length of a furrow, *i. e. quod uno progressu aratrum describit antequam regreditur*; this equals 40 perches, (or poles, each equal to 217½ feet,) or the eighth of a mile.—*Spel. Gloss. Arch.* Also, as Mins. says, the eighth part of an acre. *Stadium* and *quarentena terræ* are sometimes used for a furlong. Co. Litt. 5b.

FURLOUGH.—A temporary leave of absence from duty in the army or navy.

FURNAGIUM.—See **FORNAGIUM**.

FURNISH EVIDENCE AGAINST HIMSELF, (in State constitution). 107 Mass. 172, 182.

FURNISHES, (in a contract). 58 Ill. 338.

FURNITURE, (what is). 14 Mich. 506; 4 Com. Dig. 154.

— (library will not pass as). 3 Atk. 201, 202.

— (in an agreement). 27 Ind. 173.

FURNITURE, (in a policy of insurance). 4 T. R. 206, 209.

— (in a will). 3 P. Wms. 112 n.; 3 Ves. 310; 11 *Id.* 657.

FURNITURE, ALL MY HOUSEHOLD GOODS AND, (in a will). 2 Munf. (Va.) 234.

FURNITURE, ALL THE HOUSEHOLD, (in a will). 124 Mass. 228, 237.

FURNITURE, AND STOCK OF CARRIAGES AND HORSES, AND OTHER LIVE AND DEAD STOCK, (in a will). 8 Com. Dig. 473.

FURNITURE, HOUSEHOLD, (a cooking stove is). 2 D. Chip. (Vt.) 68; 5 Vt. 328.

— (a piano-forte is not). 30 Vt. 224; 18 Wis. 163, 165.

— (in a statute). 18 Kan. 340.

— (in a will). 1 Brewst. (Pa.) 462; 6 Phil. (Pa.) 364; 5 Munf. (Va.) 272; 3 Russ. 301.

FURNITURE, MY, (in a will). 1 Russ. 276.

FURS, (what are not). 6 Car. & P. 58.

FURST AND FONDUNG.—Time to advise or take counsel.—*Jacob*.

FURTHER, (in a will). 1 Whart. (Pa.) 252, 264.

— (synonymous with "future"). 56 Mo. 238, 241.

FURTHER ADVANCE, or CHARGE.—A second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance.—*Wharton*.

FURTHER ASSURANCE, COVENANT FOR.—One of the usual agreements entered into by a vendor for the protection of the vendee's interest in the subject of purchase. It seems to be confined to an assurance by way of conveyance, and not to extend to further obligations to be imposed on the covenantor by way of covenant. Sugd. Vend. & P. 500.

FURTHER ASSURANCE, (covenant for). 9 Johns. (N. Y.) 336; 1 Bulst. 90; 5 Co. 19 b; Cro. Jac. 251; 1 Marsh. 107; 4 Mau. & Sel. 188.

FURTHER CONSIDERATION.—

§ 1. In English practice, where, on motion for judgment made in an action, the court has not before it the materials for finally determining all the questions in dispute and disposing of the action, it may reserve the further consideration of the action, and give directions for obtaining the necessary materials in the meantime. Rules of Court, xl. 10; compare xxxiii.

§ 2. **Chancery practice**.—Thus, in an action for the administration of an estate in the Chancery Division, the judgment commonly directs a number of inquiries and accounts to be made and taken in chambers (Dan. Ch. Pr. 1228 *et seq.* See *INQUIRY*); and when this has been done the action is heard on further consideration, and the rights of the parties are ascertained. If all the questions arising in the action cannot then be disposed of, the further consideration may be again reserved, and so on. Sometimes the further consideration is taken in chambers, in order to save expense. *Id.* 1234; *Gilbert v. Smith*, 2 Ch. D. 686.

§ 3. **Queen's Bench Division practice**.—In the practice of the Queen's Bench Division, the term "further consideration" is commonly applied to those cases where the judge before whom an action is tried (with a jury) thinks that the questions of law involved are sufficiently doubtful to require more discussion than can be conveniently held at the trial, and accordingly reserves the case for further consideration, when the questions of law are argued and judgment given. See *Irvine v. Watson*, 5 Q. B. D. 102; Rules of Court, xxxvi. 22.

FURTHER DEMAND, (in a lease). 5 Cush. (Mass.) 214, 217.

FURTHER DIRECTIONS.—In the former English chancery practice, when a master ordinary in chancery made a report in pursuance of a decree or decretal order, the cause was again set down before the judge who made the decree or order, to be proceeded with. Where a master made a separate report, or one not in pursuance of a decree or decretal order, a petition for consequential directions had to be presented, since the cause could not be set down for further directions under such circumstances. See 2 Dan. Ch. Pr. (5 edit.) 1233, n.

FURTHER, I GIVE, (in a will). 2 Dowl. & Ry. 398.

FURTHER MAINTENANCE OF ACTION, PLEA TO.—A plea grounded upon some fact or facts which have arisen since the commencement of the suit, and which the defendant puts forward for the purpose of showing that the plaintiff should not further maintain his action. It is called a plea to the further maintenance of the suit, because it does not, like an ordinary plea in bar, profess to show that the plaintiff had no ground of action when he commenced the suit, but simply shows that he had no right to maintain it further. A plea of payment of money into court in satisfaction of the plaintiff's claim is in the nature of a plea to the further maintenance of the suit, such a plea admitting that the plaintiff had a good cause of action, but showing that he ought

not further to maintain it, upon the ground that the money so paid in by the defendant is sufficient to satisfy all damages which the plaintiff has sustained. *See* PUIS DARRIEN CONTINUANCE.

FURTHER OR ADDITIONAL TAXES, (in a covenant). 16 East 29.

FURTUM.—Theft; robbery. It is *manifestum et nec manifestum*. Sand. Just. (5 edit.) 139, 393, where other kinds are enumerated; and *see* 2 Reeves Hist. Eng. Law 40.

FURTUM CONCEPTUM.—Theft, where the stolen property is found on the thief (or receiver) when searched in the presence of witnesses.

Furtum est contrectatio rei alienæ fraudulentæ, cum animo furandi, invito illo domino cujus res illa fuerat (3 Inst. 107): Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.

FURTUM GRAVE.—In the Scotch law, an aggravated theft, formerly punished with death.

FURTUM MANIFESTUM.—In civil and old English law, manifest, open theft.

Furtum non est ubi initium habet detentionis per dominium rei (3 Inst. 107): There is no theft where the foundation of the detention is based upon ownership of the thing.

FURTUM OBLATUM.—The offence of receiving stolen goods.

FUTURE, (in a statute). 97 Mass. 246, 255.

FUTURE CONVEYANCES, (in bankrupt act). 2 Pa. St. 146.

FUTURE DEBT.—In the Scotch law, a debt which exists but is not yet due.—*Bell Dict.*

FUTURE EARNINGS, (what are). 115 Mass. 165.

FUTURE ESTATES.—Expectancies, which are, at the common law, of two kinds: reversions and remainders. In New York law, "an estate commencing at a future day" with or without a particular estate to support it. 1 N. Y. Rev. Stat. (3 edit.) 718, §§ 9, 10. *See* ESTATE.

FUTURE ESTATES, (defined). 12 N. Y. 133.

FUTURE EXTENSIONS OR BRANCHES, (in a contract). 5 C. E. Gr. (N. J.) 542, 557.

FUTURE INCREASE, (as applied to slaves). 2 Bibb (Ky.) 76; 4 Hen. & M. (Va.) 283; 3 Yerg. (Tenn.) 546.

FUTURE USES.—*See* CONTINGENT USES.

FUTURO, IN, (demise for term commencing). 1 Hill (N. Y.) 484.

FUZ, or FUST.—A wood or forest.

FYHTWITE.—One of the fines incurred for homicide.

FYRD, or FYRDUNG.—The military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas*.—*Wharton*.

FYRD-WITE.—The fine incurred by neglecting to join the fyrd; one of the rights of the crown.—*Anc. Inst. Eng.*

G.

G, in Law French answers, in many words, to the English W, as "gage" for "wage," "gainage" for "wainage," "gales" for "wales," "gard" for "ward," "garranty" for "warranty," "garrene" for "warren," "gast" for "waste," and the like.—*Burrill*.

GABEL.—An excise; a tax on movables; a rent, custom or service. Co. Litt. 213.

GABELLA.—A tax or duty on personalty.—*Cowell*; *Spel. Gloss.*

GABLUM.—A rent; a tax.—*Domesd.*; *Du Cange*. The gable-end of a house.—*Cowell*.

GABULUS DENARIORUM.—Rent paid in money. Seld. Tit. 321.

GAFFOLDGILD.—The payment of custom or tribute.—*Scott*.

GAFFOLDLAND.—Property subject to the gaffoldgild, or liable to be taxed.—*Scott*.

GAFOLD.—Rent, tribute or tax.

GAGE.—A pledge, pawn or caution; anything given in security. Britt. c. 27.

GAGE, ESTATES IN.—Those held *in vadio* or pledge. They are of two kinds: (1) *vivum vadium*, or living pledge, or *vifgage*; (2) *mortuum vadium*, or dead pledge, better known as mortgage.—*Wharton*.

GAGER DE DELIVERANCE.—When he who has distrained, being sued, has not delivered the cattle distrained; then he shall not only avow the distress, but *gager deliverance*, i. e. put in surety or pledge that he will deliver them.—*F. N. B.* 67.

GAGER DEL LEY.—Wager of law.

GAINAGE.—The gain or profit of tilled or planted land, raised by cultivating it; and the draught, plough, and furniture for carrying on the work of tillage by the baser kind of *sokemen* or *villeins*. *Bract. l. i. c. ix.*

GAINERY.—Tillage or the profit arising from it, or from the beasts employed therein. *Stat. Westm. 1, cc. 16, 17.*

GAINOR.—The occupier or cultivator of arable land; a *socman* or *sokeman*.—*O. N. B.* 12.

GAJUM.—A thick wood.—*Spel. Gloss.*

GALE.—From *gavel*, a rent. *See Co. Litt. 142a.*

§ 1. Under Stat. 1 and 2 Vict. c. 43, passed to regulate the peculiar laws and customs of the coal, iron and other mines belonging to the crown in the Forest of Dean and Hundred of St. Briavel's in Gloucestershire, the "free miners" of the district have the exclusive right of having gales or grants made to them, and of selling, devising or disposing of them to any persons whomsoever. All male persons born and abiding within the Hundred of St. Briavel's, of the age of twenty-one, who have worked a year and a day in a coal or iron mine within the hundred, are free miners. Quarrymen coming under a similar description, are deemed free miners for the purpose of obtaining gales of stone quarries. A person holding a gale is called a "galee."

§ 2. A gale is the right to open and work a mine within the Hundred of St. Briavel's, or a stone quarry within the open lands of the Forest of Dean. The right is a license or interest in the nature of real estate, conditional on the due payment of rent and observance of the obligations imposed on the galee. It follows the ordinary rules as to the devolution and conveyance of real estate. The galee pays the crown a rent known as a "galeage rent," "royalty," or some similar name, proportionate to the quantity of minerals got from the mine or quarry. Provision is made for fixing the extent of the mine, pit or quarry comprised in each gale.

§ 3. The gaveler (or deputy gaveler) is bound to grant gales to free miners in the order of their applications, which must be made in writing. Until the grant is actually made, the applicant has no interest or title. No free miner is entitled to more than three gales at a time. *Stats. 1 and 2 Vict. c. 43; 24 and 25 Vict. c. 40; 34 and 35 Vict. c. 85; James v. The Queen, 5 Ch. D. 153; Bain. M. and M. 160.*

GALEA.—A galley.—*Spel. Gloss.*

GALENES.—In old Scotch law, amends or compensation for slaughter.—*Bell Dict.*

GALLI-HALFPENCE.—A kind of coin which, with suskins and doittkins, was forbidden by Stat. 3 Hen. V. c. 1.

GALLIVOLATUM.—A cock-shoot, or cock-glade.

GALLON.—A liquid measure, containing two hundred and thirty-one cubic inches, or four quarts.

GALLOWS.—A beam laid over either one or two posts from which malefactors are hanged.

GAMALIS.—A child born in lawful wedlock; also one born to betrothed but unmarried parents.—*Spel. Gloss.*

GAMBLE, (in an indictment). 2 Yerg. (Tenn.) 472.

GAMBLING.—*See GAMING.*

GAMBLING, (defined). 49 Ala. 37; 39 Iowa 42.

—— (what is). 28 How. (N. Y.) Pr. 247.

—— (what is not). 3 Vr. (N. J.) 158.

—— (what is not, as applied to stocks). 70 Pa. St. 325.

—— (synonymous with "gaming"). 11 Nev. 69.

GAMBLING DEVICE, (what is). 27 Ark. 355, 360; 1 Ky. L. J. 303.

—— (what is not). 31 Mo. 35.

—— (in an indictment). 15 Ark. 71.

GAMBLING DEVICES, (in Kansas crimes act, § 230). 1 Kan. 474.

GAMBLING GAME, (what is not). 15 Ark. 259.

GAME.—

§ 1. In English law, game consists of certain wild animals, the hunting or taking of which is a recognized sport or pastime. The old writers divide wild animals into beasts of the forest and chase, (deer, hares, boars, foxes and wolves,) and beasts and fowls of warren, (hares, rabbits, pheasants and partridges,) (*Manw. 2b; Co. Litt. 233a. See CHASE; FOREST; PARK; WARREN.*) but under the statutes regulating the taking of game (commonly called the "Game Laws"), "game" consists of hares, pheasants, partridges, grouse, heath or moor game, black-game and bustards. (*Stat. 1 and 2 Will. IV. c. 32, § 2; Pat. Game L.*) Under these acts the right to kill game upon any land is vested in the occupier thereof, unless he holds it under a lease or agreement by which the right is reserved to the landlord. But every person killing, taking or pursuing game (with certain exceptions, including persons entitled to kill game under the Ground Game Act, 1880, *infra*, § 3,) is required to take out a yearly excise license, and persons who (having no such license) deal in game, must take out two annual licenses for the latter purpose, one a license by justices of the peace, the other an excise license. *Stats. 1 and 2 Will. IV. c. 32, § 18; 23 and 24 Vict. c. 90; 24 and 25 Vict. c. 91, § 17.*

§ 2. The Game Laws also contain provisions for the preservation of game and for the prevention of poaching, the contravention of which is punishable with fine or imprisonment (*infra*, § 4; in the case of poachers armed with guns, the punishment is penal servitude. *See especially* Stats. 9 Geo. IV. c. 69; 24 and 25 Vict. c. 96; 25 and 26 Vict. c. 114; 1 Russ. Cr. 621; Steph. Cr. Dig. 313.

§ 3. The Ground Game Act, 1880, provides that every occupier of land under a contract of tenancy created since the 7th September, 1880, shall have the right to kill and take ground game thereon, concurrently with any other person who may be entitled to do so, and that he shall not be able to divest himself of the right. He may also authorize certain persons to kill and take ground game on the land. "Ground game" means hares and rabbits.

§ 4. As regards the property or ownership in game, the common law rules on this subject are founded on the principle of occupancy (*q. v.*), so that if A. starts game on B.'s land, and kills it on C.'s land, the property in it vests in A.; this rule, however, has been so far modified by Stat. 1 and 2 Will. IV. c. 32, § 36, that if the trespasser is found on the land with the game in his possession, and in search or pursuit of other game, C. may take the game from him. A trespasser is of course always liable to an action at law, and by § 31 *et seq.* of the same statute, trespassing in search of game is made an offence punishable by fine on summary conviction. If A. starts game on his own land and kills it on B.'s land, the property remains in A.; but if, being a trespasser, he starts it on B.'s land and kills it there, the property vests in B. (2 Steph. Com. 21.) There are special rules as to game confined in parks, chases, forests and warrens. *See* those titles, and ANIMALS, § 2.

§ 5. In American law, "game" has no precise signification, or rather it is a word of so comprehensive meaning that an enumeration of the animals, birds and fishes to which it is applied in different localities would be both difficult and unconstructive. While most frequently applied to birds killed for food and sport, it also includes many beasts and fishes, the names of which are often enumerated in the game laws passed for their preservation.

§ 6. In criminal law.—The popular meaning of "game" is "a contrivance, arrangement or institution designed to furnish sport, recreation or amusement; as a game of chance, &c."—*Webster*. And to play any game, in this sense, would not be obnoxious to any provision of criminal law, unless there is something connected with the game or manner in which it is played, dangerous to life, limb or morals, *i. e.* contrary to public policy: and it is the element of gain or loss, the staking of

money or other valuable thing upon the result of a game, that would otherwise be lawful, which comes within the condemnation of the criminal law. *See* GAMING.

GAME, (defined). 11 Ind. 14.

—— (a horse-race is). 23 Ill. 493; 9 Ind. 35.

—— (an election is not). 11 Ind. 14.

GAME LAWS.—Laws passed for the preservation of game (in England, for the protection of proprietary rights in game. (*See* GAME, §§ 2-4.) But such rights are not recognized in the United States). These laws prohibit the killing of game in certain seasons (breeding times) in order that the various species may not become extinct. *See* the statutes of the several States.

GAME OF CHANCE, (ten-pins is not). 8 Ired. (N. C.) L. 271.

GAME OF HAZARD, (what is not). 23 Ark. 726.

GAMING, or GAMBLING.—The art or practice of playing and following up for gain, any game, particularly those of chance, as cards, dice, &c.—*Wharton*. The principal English acts for the punishment of those who keep or frequent common (*i. e.* public) gaming houses are 8 and 9 Vict. c. 109, 16 and 17 Vict. c. 119, and 17 and 18 Vict. c. 38; gaming in public places is punishable under Stat. 5 Geo. IV. c. 83. (4 Steph. Com. 272; *see* DISORDERLY HOUSE.) In the United States, the punishment for gaming is regulated in each State by statute.

GAMING, (defined). 51 Ill. 473; 47 Ind. 127, 5 Sneed (Tenn.) 507.

—— (what is). 15 Ala. 383; 20 Id. 30; 48 Id. 122; 51 Ill. 473; 8 Blackf. (Ind.) 332; 6 Bush (Ky.) 326; 18 Me. 337; 14 Gray (Mass.) 26, 390; 8 Metc. (Mass.) 232; 4 Mo. 536, 599; 39 Id. 420; 3 Heisk. (Tenn.) 488; 17 Tex. 191; 22 Gratt. (Va.) 917; Cowp. 281; 1 Wils. 220; 2 Id. 36, 309.

—— (what is not). 15 Ind. 474; 47 Id. 127; 1 Morr. (Iowa) 169; 34 Miss. 606; 4 Coldw. (Tenn.) 195; 10 Tex. App. 377; 8 Gratt. (Va.) 592; 5 Rand. (Va.) 652; 1 H. Bl. 29; 5 Mod. 6; 1 Salk. 344.

—— (synonymous with "betting on games"). 2 Md. 312; 33 Tex. 331.

GAMING APPARATUS, (as used in 2 Rev. Stat. 417, § 38). 15 Ind. 474.

GAMING HOUSE, (what is not). 8 Cow. (N. Y.) 139.

GAMING, IMPLEMENTS OF, (game cocks are not). 11 Metc. (Mass.) 79.

GAMING HOUSES.—Establishments where gaming is carried on as a business. They are nuisances, and are sometimes proceeded against as “disorderly houses” (*q. v.*)

GANANCIAL PROPERTY.—In the Spanish law, a species of community in property enjoyed by husband and wife, the property being divisible between them equally on a dissolution of the marriage. 1 Burge Conf. L. 418.

GANGIATORI.—Officers, in ancient times, whose business it was to examine weights and measures.—*Skene Verb. Sig.*

GANG-WEEK.—The time when the bounds of the parish are lustrated or gone over by the parish officers—rogation week.—*Encycl. Lond.*

GANTELOPE.—A military punishment, in which the criminal running between the ranks receives a lash from each man.—*Encycl. Lond.* This was called “running the gauntlet;” the word itself being pronounced “gauntlett.”

GAOL.—A prison for temporary confinement; a jail; a strong place for the confinement of offenders against the law. See JAIL; PRISON.

GAOL DELIVERY.—The commission of general gaol delivery is one of the commissions given to the English judges or commissioners of assize. (See ASSIZE, § 2.) It authorizes them to try, and (if acquitted) to deliver, *i. e.* discharge from custody, every prisoner who shall be in gaol for some alleged crime when they arrive at the circuit town. Formerly a special writ of gaol delivery was issued for each particular prisoner, but this has long been obsolete. The commission of general gaol delivery is supplemental to the commission of Oyer and Terminer (*q. v.*), which only empowers the judges to try persons indicted before them at the same assizes, while the commission of general gaol delivery authorizes the trial of every prisoner, whensoever and before whomsoever indicted. Persons are considered to be in gaol for this purpose although they may have been liberated on bail. 4 Steph. Com. 315; 1 Reeves Hist. 157; Judicature Act, 1873, §§ 16, 37. “Prisoner” includes persons liberated on bail. See CENTRAL CRIMINAL COURT; OYER AND TERMINER.

GAOLER.—The master or keeper of a prison; one who has the custody of a place where prisoners are confined.

GAOL LIBERTIES, or LIMITS.—See JAIL LIMITS.

GARANDIA, or GARANTIA.—A warranty.—*Spel. Gloss.*

GARANTIE.—In French law, this word corresponds to warranty or covenants for title in

English law. In the case of a sale this *garantie* extends to two things: (1) Peaceful possession of the thing sold; and (2) absence of undisclosed defects (*défauts cachés*).

GARAUNTOR.—A warrantor of title.

GARB, or GARBA.—A bundle or sheaf of corn; a handful. Fleta 1, 2, c. xii.

GARBALES DECIMÆ.—In the Scotch law, tithes of corn.—*Bell Dict.*

GARBLER OF SPICES.—An ancient officer in the city of London, who might enter into any shop, warehouse, &c., to view and search drugs and spices, and garble and make clean the same, or see that it be done. Stat. 6 Anne c. 16.

GARCIO STOLÆ.—Groom of the stole. Pl. Cor. 21 Edw. I.

GARCIONES.—Servants who follow a camp. Wals. 242.

GARD, or GARDE.—Wardship, care, custody; also, the ward of a city.

GARDEIN.—A keeper; a guardian.

GARDEN.—A small piece of land, generally near a dwelling-house, in which vegetables, fruits and flowers are raised for home consumption. See CURTILAGE.

GARDEN, (passes with a house). Plowd. 171.
GARDEN-PLOT, (in a lease). Cro. Jac. 648.

GARDIA.—Custody.—*Lib. Feud.*

GARDIANUS.—A guardian; a warden.—*Spel. Gloss.*

GARLANDA.—A chaplet, coronet, or garland.

GARNESTURA.—Victuals, arms and other implements of war necessary for the defence of a town or castle. Mat. Par. 1250.

GARNISH.—(1) Money paid by a prisoner on his going to prison. Forbidden by 4 Geo. IV. c. 43, § 12, r. 23. (2) Warning an heir. Abolished by 6 Geo. IV. c. 105, § 13.

GARNISHEE.—NORMAN-FRENCH: *garnir*, to warn (Britt. 50a), from Teutonic, *warnon*. (Littre Dict. s. v.) Garnishment seems to have originally meant any kind of notice to the opposite party in a proceeding. Marsha's Case, 1 Leon. 325.

§ 1. A person in whose hands a debt has been attached. See ATTACHMENT, § 2; EXAMINATION; FOREIGN ATTACHMENT.

§ 2. In the English High Court an order for the attachment of debts is called a garnishee order. If the garnishee does not dispute his indebtedness to the judgment debtor, he must pay the money into

court; if he fails to do so, the court may direct execution to be issued to levy the amount of the debt. If he disputes his liability, the court may direct an issue to decide the question. (Rules of Court, xlv. 4, 5.) A similar practice prevails in the United States, in some of which the person in whose hands the debt is attached is called the garnishee, and in others the "trustee." As to the practice in the English Mayor's Court, see FOREIGN ATTACHMENT.

GARNISHEE, (defined). 14 La. Ann. 374; 18 Id. 476; 24 Miss. 638; 2 Gr. (N. J.) 344, 348; 1 Wis. 447.

GARNISHMENT.—Attachment, (*q. v.*); warning not to pay money, &c., to a defendant, but to appear and answer to a plaintiff-creditor's suit. In old English practice, it usually arose in cases of detinue, thus: If a defendant alleged that certain deeds were delivered to him by the plaintiff and another person upon condition, such defendant prayed that the other person might be warned to plead with the plaintiff, as to whether the conditions were performed or not, he, the defendant, being willing to deliver the property to the person entitled to it; thereupon a process of garnishment, monition, or notice issued, and all parties were brought before the court, that the cause might be thoroughly and justly determined. It was nearly allied to the proceedings in interpleader. (3 Reeves Hist. Eng. Law 448.) In American practice, garnishment is a proceeding similar to attachment (*q. v.*) and trustee process (*q. v.*)

GARNISHMENT, (defined). 57 Ala. 111; 64 Id. 371.

—— (object of). 4 Ga. 393, 394.

GARNISTURA.—A furnishing or providing of ammunition and other articles used in war.—*Cowell.*

GARRANTY.—See GUARANTY.

GARSON.—A menial servant.—*Toland.*

GARSUMMUNE.—A fine or amercement.—*Spel. Gloss.*

GARTER.—A string or ribbon by which the stocking is held upon the leg; the mark of the highest order of knighthood, ranking next after the nobility. This military order of

knighthood is said to have been first instituted by Richard I., at the siege of Acre, where he caused twenty-six knights who firmly stood by him, to wear thongs of blue leather about their legs. It is also said to have been perfected by Edward III., and to have received some alterations, which were afterwards laid aside, from Edward VI. The badge of the order is the image of St. George, called the "George," and the motto is *Honi soit qui mal y pense.*—*Wharton.*

GARTH.—An inclosure about a house, church, &c.; a close; a dam or wear; a place formed at the side of a river that the fish might be more easily taken.

GAS, (in insurance policy). L. R. 3 Ex. 71.

GASTALDUS.—A temporary governor of the country.—*Blount.* A bailiff or steward.—*Spel. Gloss.*

GAUGEATOR.—A gauger.—*Cowell.*

GAUGER.—A surveying officer under the customs, excise and internal revenue laws, appointed to examine all tuns, pipes, hogsheads, barrels and tierces of wine, oil and other liquids, and to give them a mark of allowance, as containing lawful measure. There are also private gaugers in large seaport towns, who are licensed by government to perform the same duties.

GAUGETUM.—A gauge or gauging; a measure of the contents of any vessel.

GAVE, GRANTED AND ASSIGNED, (in a deed). 4 Mod. 149.

GAVEL.—See GABEL.

GAVELBRED.—Rent in bread, corn or provision; rent payable in kind.—*Cowell.*

GAVELCESTER.—A certain measure of rent-ale.—*Cowell.*

GAVELET is "a remedy or process, peculiar in denomination to Kent and London, by which the lord of the fee, when his tenant is in arrear for rent or service, may force him to pay the arrears and damages by seizing the land and holding it till payment." (Hargrave's note to Co. Litt. 142a; *Termes de la Ley*, s. v.) The word seems to have originally meant *rent*. Co. Litt. 142a. See CESSAVIT.

GAVELGELD.—Payment of tribute or toll; that which yields tribute or toll. Mon. Ang. tom. 3, 155.

GAVELHERTE.—A service of ploughing performed by a customary tenant.—*Cowell; Du Cange.*

GAVELKIND.—Apparently from *gavel*, a rent. (Co. Litt. 142a.) Compare GALE; GAV-ELLER; GAVELET.

§ 1. The tenure by which all land in the county of Kent is presumed to be held until the contrary is proved. The tenure also occurs in other parts of England. No land is now gavelkind which can be shown to have originally been held by a tenure higher than socage, such as frankalmoign or a military tenure. *Elt. Tenures of Kent*; *Elt. Copyh.* 11; *Litt.* §§ 210, 265; *Co. Litt.* 140 a.

§ 2. Its principal incidents are (1) the partibility of the inheritance, *i. e.* the land descends, on the death of the tenant, to all the sons of the tenant equally; in some cases the custom extends to collaterals, *e. g.* brothers (*see* COPARCENER); (2) the right of the widow or widower of a deceased tenant to have half the land for dower or curtesy until a second marriage, the widower taking by the curtesy whether issue has been born of the marriage or not (*see* DOWER; CURTESY); (3) the right of an infant tenant to alienate his land by feoffment at the age of fifteen years. (*See* FEOFFMENT.) Formerly, also, gavelkind lands were peculiar in being exempt from the liability to forfeiture on conviction for murder, but in this respect other lands now stand on the same footing. (*Wms. Real Prop.* 130.) In many places in Kent the freeholders are subject to customary heriots, fines and other ancient dues, and are compellable under penalty of distress to come for admittance into their tenancies.

§ 3. The most remarkable incident of this tenure being the partibility of the land upon descent, the word "gavelkind" has come to be applied to many copyholds which only resemble the freehold tenure in this particular; but this use of the word is improper, and apt to lead to mistakes. *Elt. Copyh.* 10. *See* COPARCENER; DISGAVEL; SOCAGE; TENURE.

GAVELKIND, (custom of). 4 Com. Dig. 532; 1 Steph. Com. 54, 213.

GAVELLER.—An officer of the English crown having the general management of the mines, pits and quarries in the Forest of Dean and Hundred of St. Briavel's, subject, in some respects, to the control of the Commissioners of Woods and Forests. He grants gales to free miners in their proper order, accepts surrenders of gales, and keeps the registers required by the acts. There is a deputy gaveller, who appears to exercise most of the gaveller's functions. *See* GALE.

GAVELMAN.—A tenant liable to tribute. —*Blount.*

GAVELMED.—The duty or work of mowing grass or cutting meadow-land, required by the lord from his customary tenants. —*Somn. Gavelk. App.*; *Blount*; *Cowell.*

GAVELWERK.—The personal labor of customary tenants. —*Wharton.*

GAZETTE.—The official newspaper of the English government, said to have been first published at Oxford, in 1665; on the removal of the court to London, the title was changed to the *London Gazette*. It is published on Tues-

days and Fridays, and contains all the acts of state, and proclamations; also, dissolutions of partnership, and notices of proceedings in bankruptcy. It is evidence of such governmental proceedings as it contains. 5 T. R. 436.

GEBOCIAN.—To convey (*loc-land*) by writing. (1 Reeves Hist. Eng. Law 10.) *Gebocced*, conveyed.

GEBURSCRIPT.—Neighborhood or adjoining district. —*Cowell.*

GEBURUS.—An inhabitant of the same geburship or village. —*Cowell.*

GELD.—A mulct, compensation, value, price. *Angeld* was the single value of a thing; *twigeld*, double value, &c. —*Cowell.* (*See* DANEGELT.) So, *wergeld* was the value of a man slain; *orfgeld*, that of a beast. —*Brown.*

GELDABLE.—Taxable. —*Cowell.*

GELDING, ("horse," not synonymous with) 3 Humph. (Tenn.) 323.
—— (includes "cattle"). 1 Leach C. C. 73 n.

GEMOT, or GEMOTE.—A mote or moote, meeting, public assembly. The various kinds were: (1) The *folc-gemot*, or general assembly of the people, whether it was held in a city or town, or consisted of the whole shire. It was sometimes summoned by the ringing of the moot-bell. Its regular meetings were annual. (2) The *shire-gemot*, or county court, which met twice during the year. (3) The *burg-gemot*, which met thrice in the year. (4) The *hundred-gemot*, or hundred court, which met twelve times a year in the Saxon ages; but afterwards a full, perhaps an extraordinary, meeting of every hundred was ordered to be held twice a year. This was the sheriff's tourn, or view of franc-pledge. (5) The *halle-gemot*, or the court-baron. (6) The *wardemotus*. (*See* the several titles.) —*Anc. Inst. Eng.*

GENEALOGY.—GREEK: *γενεα*, and *λόγος*.

History of the succession of families; enumeration of descent in order of succession; pedigree. —*Encycl. Lond.*

GENEARCH.—The head of a family.

GENEATH.—A hind, or farmer. —*Spel. Gloss.*

GENER.—A son-in-law.

GENERAL.—(1) Relating to the whole of a thing, class, genus or kind, as distinguished from "special," which means something limited to a particular purpose, occasion, or thing: (2) A military officer, in rank next above a colonel. The "General of the army," however, is the highest

military officer in the United States, except the president in his character of "commander in chief of the army and navy." U. S. Rev. Stat. 1094.

GENERAL ACCOUNT, (balance due on). 3 Pet. (U. S.) 430.

GENERAL AGENCY, (defined). 32 Me. 225, 227; Story Ag. § 17.

GENERAL AGENT.—A person who has general authority in regard to a particular object or thing. See Story Ag. §§ 17-19.

GENERAL AGENT, (defined). 3 Wend. (N. Y.) 83, 91; 13 Id. 518; Paley Ag. 162.

—— (who is not). 6 Monr. (Ky.) 82, 85.

—— (distinguished from "special agent"). 7 Ala. 800, 804; 7 Wheel. Am. C. L. 431; Paley Ag. 2.

—— (powers of). 18 Johns. (N. Y.) 366; 21 Wend. (N. Y.) 279.

GENERAL ASSEMBLY.—In some of the States the legislature is so called.

GENERAL AVERAGE.—The contribution made by the parties to an adventure towards a loss, consisting in the sacrifices made or expenses incurred by some of them, for the common benefit of ship and cargo. Hopk. Av. See AVERAGE, § 3.

GENERAL AVERAGE, (defined). 3 Kent Com. 232.

—— (what is). 4 Mass. 548.

GENERAL BUSINESS MANAGER, (of a corporation). 42 Conn. 556.

GENERAL CHARACTER.—See CHARACTER, §§ 1, 2.

GENERAL COUNCIL.—(1) A council consisting of members of the Roman Catholic Church from most parts of the world, but not from every part, as an Ecumenical Council. (2) One of the names of the English parliament.

GENERAL CREDIT, (of witness, distinguished from "particular credit"). 5 Abb. (N. Y.) Pr. n. s. 232, 233.

GENERAL DAMAGES.—Damages which necessarily, or by implication of law, result from the wrong or breach of duty complained of, and which may be awarded by the jury, without being specially pleaded or proved.

GENERAL DEPOSIT, (in a bank, is a loan). 19 Am. Dec. 418 n.

GENERAL DEMURRER.—A demurrer which excepts to the sufficiency

of a pleading in general terms, without showing specifically the nature of the objection. It is resorted to when the objection is to matter of substance. In England, all demurrers are now general demurrers, as special demurrers were abolished by the Common Law Procedure Act, 1852, § 51.

GENERAL DENIAL.—See GENERAL ISSUE; PLEA.

GENERAL ELECTION.—An election for State officers, as distinguished from an election for municipal, *i. e.* city, county and town officers.

GENERAL FUND, (in a statute). 27 Barb. (N. Y.) 575, 588.

GENERAL GAOL DELIVERY.—See GAOL DELIVERY.

GENERAL IMPARLANCE.—An imparlance (*q. v.*) granted upon defendant's prayer, in which he reserves to himself no exceptions.

GENERAL INCLOSURE ACT.—The Stat. 41 Geo. III. c. 109, which consolidates a number of regulations as to the enclosure of common fields and waste lands. See, also, 8 and 9 Vict. c. 118; and INCLOSURE.

GENERAL INSURANCE, (defined). 2 Johns. (N. Y.) Cas. 127, 150.

GENERAL ISSUE.—

§ 1. In civil cases.—A plea simply traversing *modo et formâ* the allegations in the declaration, as the plea of "not guilty," in torts; "not indebted," to money counts, or "*non-assumpsit*," to actions on simple contract. By statutes in some jurisdictions the general issue may be pleaded and special defences relied on under it, but the defendant must give notice in the margin of the plea of the particular statute conferring this privilege.

§ 2. In criminal proceedings, the general issue is "not guilty," which is pleaded *vivâ voce* by the prisoner at the bar.

GENERAL ISSUE, (test as to when plea amounts to). 1 Hill (N. Y.) 266.

GENERAL LAND OFFICE.—A bureau of the department of the interior in the United States government, having charge of the survey, sale, granting of patents and other matters relating to the public lands.

GENERAL LAW, (defined). 13 Vr. (N. J.) 357, 363.

— (what is). 11 Vr. (N. J.) 123; 31 Wis. 257.

— (what is not). 13 Vr. (N. J.) 533, 535.

— (in State constitution). 37 Cal. 366, 367.

GENERAL LEGACY.—See LEGACY.

GENERAL LEGACY, (what is). 3 Duer (N. Y.) 477, 543.

GENERAL LETTER OF ATTORNEY, (distinguished from "special"). 1 Salk. 96.

GENERAL LIEN.—A right to detain a chattel, &c., until payment be made, not only of any debt due in respect of the particular chattel, but of any balance that may be due on general account in the same line of business. A general lien being against the ordinary rule of law, depends entirely upon contract, express or implied, from the special usage of dealing between the parties.

GENERAL LIEN, (as contradistinguished from "particular lien"). 21 Wend. (N. Y.) 14.

GENERAL LINE OF BUILDINGS, (in a statute). L. R. 2 Q. B. 528.

GENERAL MEETING.—A meeting of the shareholders, generally, of a company, or of the creditors, generally, of a debtor; and it is called an extraordinary general meeting when it is summoned on some extraordinary occasion. It is also opposed to a special meeting. See MEETING.

GENERAL OCCUPANT.—See OCCUPANCY.

GENERAL OR COMMON FIELD, (establishing a turnpike road over). 14 Mass. 440.

GENERAL OWNER.—See PROPERTY.

GENERAL PARTNERSHIP.—See PARTNERSHIP.

GENERAL POWER, (when it is in trust). 20 Hun (N. Y.) 360, 364.

GENERAL PROPERTY, (defined). 1 N. Y. 20, 25.

GENERAL QUARTER SESSIONS, (in a statute). 15 East 633.

GENERAL REPUTATION, (of a witness). 3 Serg. & R. (Pa.) 336, 339.

GENERAL SESSIONS.—A court of record; in England, held by two or more justices of the peace, for the execution of

the authority given them by the commission of the peace and certain statutes. General sessions held at certain times in the four quarters of the year pursuant to Stat. 2 Hen. V. are properly called quarter sessions (*q. v.*), but intermediate general sessions may also be held. Pritch. Quar. Sess. 2. As to the court of this name in America, see COURT OF GENERAL SESSIONS.

GENERAL SHIP.—Where the master and owners of a ship engage with separate merchants to convey their goods to the place of her destination, the contract is said to be for conveyance in a general ship, as opposed to a chartered ship, *i. e.* a ship which is let to one or more persons under one contract of affreightment, called a charter-party (*q. v.*) In the case of a general ship, the contract with each freighter generally takes the form of a bill of lading (*q. v.*) (Sm. Merc. Law ch. iii. § 2.) A ship-owner who professes to carry the goods of all persons who apply to him, so long as he has room in his ship, is a common carrier (*q. v.*) *Nugent v. Smith*, 1 C. P. D. 19, 423.

GENERAL SHIP, (what is). 6 Cow. (N. Y.) 173.

GENERAL; SPECIAL, (defined). 1 N. Y. 232.

GENERAL SPECIAL IMPARLANCE.—An imparlance (*q. v.*) granted upon a prayer in which the defendant reserves to himself "all advantages and exceptions whatsoever." 2 Chit. Pl. 408.

GENERAL STATUTE.—One which relates to or concerns the entire community, as distinguished from a local, private or special statute.

GENERAL STATUTES, (what are). 5 Com. Dig. 322.

GENERAL TAIL.—An estate tail where one parent only is specified, whence the issue must be derived, as to A. and the heirs of his body. See ESTATE TAIL, § 2.

GENERAL TENANCIES, (in a statute). 22 Ind. 122.

GENERAL VERDICT.—The ordinary decision of the jury, when they find the point in issue, generally, "for the plaintiff," or "for the defendant." See VERDICT, § 2.

GENERAL WARRANT.—A process from the English secretary of state, to arrest

(without naming any) the author, printer and publisher of such obscene and seditious libels as were specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons. (Com. Jur. 22d April, 1766.)—*Warton*.

GENERAL WARRANTY.—The name of a covenant called also the "covenant of warranty," inserted, in America, in "full covenant" or "warranty" deeds, to the effect that the grantor will warrant and forever defend the title of the grantee to the premises conveyed. It is one of the "real covenants."

GENERAL WORDS.—

§ 1. In conveyances, mortgages and many other assurances of corporeal hereditaments, numerous words descriptive, not only of every kind of easement, privilege or appurtenance, supposed to be capable of belonging to the property assured, but also of portions of the soil, fixtures and produce of the land (as timber) are added to the parcels or description of the property, and are called the "general words." They are useful when there are any easements or privileges reputed to belong to the property, although not legally appurtenant to it, as they would not pass with the property unless expressly mentioned. But with this exception, the "general words" are as a rule unnecessary verbiage. See 1 Davids. Conv. 91 *et seq.* See, also, ALL THE ESTATE; OPERATIVE PART; PARCELS.

§ 2. By the English Conveyancing Act, 1881, (§ 6,) it is unnecessary to insert, in any conveyance of lands, building, or manors executed after the 31st December, 1881, the "general words" usually contained in such conveyances, as the act declares that they shall be deemed to be included in the conveyance.

GENERAL WORDS, (in a covenant, effect of). 3 Moo. 703.

— (in a deed, effect of). Lofft 398; 1 Ld. Raym. 235, 662; 4 Mau. & Sel. 423, 427; 4 Moo. 448; 1 Show. 150, 151; 2 Tyrw. 178.

— (in a lease, effect of). 2 Moo. 592.

— (in a release, effect of). 3 Lev. 273; 3 Mod. 277, 279.

— (in a statute, effect of). 2 Co. 46; Cowp. 360; 1 Ld. Raym. 321; 12 Mod. 166, 170; 1 Bl. Com. 88.

— (in a will, effect of). 1 P. Wms. 302.

GENERALE.—The usual commons in a religious house, distinguished from *pietantiae*, which on extraordinary occasions were allowed beyond the commons.—*Cowell*.

Generale dictum generaliter est interpretandum (8 Co. 116 a): A general expression should be interpreted generally.

Generale nihil certi implicat (Wing. 164): A generality involves no particularity.

Generale tantum valet in generalibus quantum singulare in singulis (11 Co. 59 b): What is general has as much force among general things as what is particular has among particular things.

GENERALIA.—General things.

Generalia sunt præponenda singularibus (Branch Pr.): General things are to precede particular things.

Generalia specialibus non derogant (Jenk. Cent. 120, cited L. R. 4 Ex. 226): General words do not derogate from special.

Generalia verba sunt generaliter intelligenda (3 Inst. 76): General words are to be understood generally.

Generalibus specialia derogant (Lofft 351; Halkerston 51): Special things derogate from general.

GENERALIS.—General.

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa (8 Co. 154): A general clause is not to be extended to things which have been specifically embraced.

Generalis regula generaliter est intelligenda (6 Co. 65): A general rule is to be understood generally.

GENERALITER.—Generally.

GENERALS OF ORDERS.—Chiefs of the several orders of monks, friars, and other religious societies.

GENERATIO.—The issue or offspring of a mother-monastery.—*Cowell*.

Generi per speciem derogatur: A particular enumeration may occasionally detract from or diminish the extent of a general phrase or general description; but a general description will not diminish from a particular enumeration. A maxim of law which must (like other general maxims) be applied with discrimination.

GENEROSA.—A gentlewoman.—*Cowell*.

GENEROSI FILIUS.—The son of a gentleman. Generally abbreviated, *gen. fil.*

GENEROSUS.—A gentleman.—*Spel. Gloss.*

GENICULUM.—A degree of consanguinity.—*Spel. Gloss.*

GENS.—Race; nation; great family. In the Roman law, a subdivision of the people next to the *curia*, and constituting a number of *familia*.—*Calv. Lex.*

GENTILES.—In the Roman law, the members of a *gens* or common tribe, and to

whom the property of a deceased member anciently belonged, failing any *sui hæredes* or *agnati*.—*Brown*.

GENTILI.—Alberico Gentili (Albericus Gentilis) was born the 14th January, 1552, (*see* a fragment from Gentili's MSS., published in the "*Academy*" for Sept. 8, 1877,) in Ancona; took the degree of doctor at Perugia in 1572; became professor of law at Oxford in 1587, and died there in 1611. He wrote *De juris interpretibus dialogi sex*, Lond. 1582; *De Legationibus*, 1583; *De jure belli libri III.*, Lugd. Bat. 1589; *Comment. secunda de juri belli*, 1589; *Opera omnia*, Neap. 1770. (Holz. Encycl. s. v.) Professor Holland has recently published a new edition of the *De jure belli libri tres* (Clarendon Press, 1877).

GENTLEMAN.—FRENCH: *gentilhomme*; ITALIAN: *gentiluomo*; LATIN: *homo gentilis*, a man of ancestry, however high his rank.

All persons in England above yeomen; where-by noblemen are truly called "gentlemen." (Smith de Rep. Ang. l. 1, cc. xx. xxi.) The word was not employed as a legal addition until about the time of Henry V. The gentry may be divided into three classes: (1) Those who derive their stock with arms from their ancestors, are gentlemen of blood and coat-armor. They are of course the most noble, who can prove the longest uninterrupted continuance of nobility in the families of both their parents; (2) those who are ennobled, by knighthood or otherwise, with the grant of a coat-of-arms, are gentlemen of coat-armor, and give gentility to their posterity. Such have been scornfully designated "gentlemen of paper and wax;" (3) those who, by the exercise of a liberal profession or by holding some office, are gentlemen by reputation, although their ancestors were ignoble, as their posterity remains after them. These are not really gentlemen, though commonly accounted as such. (2 Steph. Com. (7 edit.) 617.)—*Wharton*.

GENTLEMAN, (a school-master is). 5 Taunt. 759.

—— (in a justification of bail). 7 Dowl. & Ry. 772.

GENTLEMAN USHER.—One who holds a post at the English court to usher others to the presence, &c.

GENTLEWOMAN.—A woman of birth above the common; an addition of a woman's state or degree.—*Wharton*.

GENUS.—In logic "genus" is the first of the universal ideas, and is when the idea is so common that it extends to other ideas which are also universal; e. g. incorporeal hereditament is *genus* with respect to a *rent*, which is *species*. *Genus summum* is that which holds the uppermost class in its predicament; or it is that which

may be divided into several species, each where-of is a genus in respect to other species placed below. Woolley's Introd. to Logic 45; 1 Mill's Log. 133.

GEOPONICS.—The science of cultivating the ground; agriculture.

GEREFA.—A reeve (q. v.)

GERENS.—Bearing; *gerens datum*, bearing date. Hob. 19.

GERMAN.—Brother; one approaching to a brother in proximity of blood; thus, the children of brothers and sisters are called "cousins-german."

GERONTOCOMIUM.—An almshouse or hospital for old people.—*Encycl. Lond.* Their managers are called *gerontocomi*.

GERSUMARIUS.—Fineable; liable to be amerced at the discretion of the lord of a manor.—*Cowell*.

GESTATION.—The period of gestation is that time which elapses between the conception and birth of a child. It is usually about nine months of thirty days each; but may be shorter or longer. (Co. Litt. 123 b and Hargrave's note. Coke calls it *legitimum tempus*.) The time is added, where necessary, to the period allowed under the rule against perpetuities; e. g. if an estate is limited to A. for life, with remainder to his eldest son on attaining twenty-one, and A. dies leaving his widow pregnant with a son, but without any other issue, the remainder to the son takes effect on his birth. Wms. Real Prop. 320. *See* DE VENTRE INSPICIENDO.

GESTIO.—Behavior; conduct; the doing, or management of a thing.

GESTIO PRO HÆREDE.—Behavior as heir. Conduct by which the heir renders himself liable for his ancestor's debts, as by taking possession of title-deeds, receiving rents, &c.

GESTOR.—One who transacts business for another.—*Calv. Lex*.

GESTU ET FAMA.—*See* DE GESTU ET FAMA.

GESTUM.—A thing done; a transaction. *See* ACTUM; FACTUM.

GEWINEDA.—The ancient convention of the people to decide a cause. LL. Æthel. c. i.

GEWITNESSA.—The giving of evidence in the ancient British law. Leg. Athel. c. 1.

GEWRITE.—In Saxon times, writings, deeds, or charters. 1 Reeves Hist. Eng. Law 10.

GIBBET.—A gallows; the post on which malefactors are hanged, or on which their bodies are exposed. It differs from a common gallows in that it consists of one perpendicular post, from the top of which proceeds one arm, except it be a double gibbet, which is formed in the shape of the Roman capital T.—*Encycl. Lond.*

GIFT—GIVE—are words of wide signification, and import the transferring of property from one to another, (Co. Litt. 301b; Britt. 87a,) especially when it is done without recompense, as opposed to a sale or barter. A gift by will is either a devise or a bequest (*q. v.*) Some writers speak of a gift in law, or gift by act of law; thus, when a woman is married to a husband, this operates as a gift in law of all her goods to him, (Shep. Touch. 227; Co. Litt. 118b,) subject to the rules introduced by the various Married Women's Acts (*q. v.*)

§ 2. As an operative word in conveying, "give" is as wide as "grant" (*q. v.*) (Co. Litt. 301b.) It was formerly the technical and proper word in a feoffment (*q. v.*), and created an implied warranty of title. 8 and 9 Vict. c. 106, § 3; Wms. Seis. 101.

§ 3. **Estate tail.**—"Gift," in the old writers, frequently means a conveyance of land in tail. Shep. Touch. 228. See *DE DONIS; DONEE; DONOR.*

§ 4. **Living.**—Gift is also applied in England to benefices or livings. Thus, if an advowson belongs to A., the living is said to be in A.'s gift.

§ 5. **Deed of gift.**—In popular language, a voluntary conveyance or assignment is called a deed of gift.

GIFT, (defined). 1 Edw. (N. Y.) 294; 7 Johns. (N. Y.) 26.

— (what constitutes). 2 Johns. (N. Y.) 52; 10 *Id.* 297; 1 Nott & M. (S. C.) 223.

— (what is not). 12 Johns. (N. Y.) 188; 18 *Id.* 145.

— (distinguished from "grant"). 128 Mass. 269, 270; 1 Chit. Gen. Pr. 309.

— (title to personal property by). 1 Chit. Gen. Pr. 104.

GIFT ENTERPRISE, (in a lease). 106 Mass. 419, 422.

GIFT, PAROL, (of a chattel). 2 Barn. & Ald. 551.

— (of a debt). 1 Watts (Pa.) 271.

— (of land). 3 Watts (Pa.) 253; 6 *Id.* 509; 2 Whart. (Pa.) 387.

GIFT OF PERSONAL PROPERTY.—See *DONATIO CAUSA MORTIS; DONATIO INTER VIVOS.*

GIFTA AQUÆ.—The stream of water to a mill. Mon. Ang. tom. 3.

GIFTOMAN.—In the Swedish law, the right to dispose of a woman in marriage.

GILD.—This word (more commonly spelled *guild*) signifies primarily tribute, and secondarily, the fraternity or company that is subject to the tribute. The company is a body of persons bound together by orders and laws of their own making; the king's license having been first had to the making thereof. A gild of merchants may be incorporated by grant of the sovereign, and such incorporation, without more, is sufficient to establish them as a corporation forever. *Guildhall* is the name given to the hall of meeting of the guild. The term is applicable to the public place of meeting of the mayor, aldermen, and commonalty of every city and borough, but it is applied *par excellence* to the place of meeting of the lord mayor, aldermen, and commonalty of the city of London. See *GUILDHALL.*

GILD MERCHANT.—Merchants privileged to hold pleas of land among themselves. —*Scott.*

GILD RENT.—Certain payments to the crown from any gild or fraternity.

GILDA MERCATORIA.—A mercantile meeting or assembly. If the king grants to a set of men the privilege to have *gildam mercatoriam*, this is sufficient to incorporate them. 10 Co. 30.

GILDABLE.—Liable to pay a gild.—*Cowell.*

GILDALE.—A composition, where every one paid his share.—*Blount.*

GILDHALL.—See *GUILDHALL.*

GILDO.—In Saxon law, a member of a gild.—*Spel. Gloss., voc. Geldum.*

GILL.—A liquid measure containing one-fourth of a pint.

GILOUR.—A cheat or deceiver who sold false or spurious things for good, as pewter for silver. Britt. c. 15.

GIRANTEM.—ITALIAN: *girare*, to draw. The drawer.

GIRTH AND SANCTUARY.—In old Scotch law, an asylum or refuge given to those who had murdered without previous design, and in the heat of passion.—*Bell Dict.*

GISEMENT.—Cattle taken in to graze at a certain price; also the money received for grazing cattle.

GISETAKER.—A person who took cattle to graze.

GISLE.—A pledge. *Fredgisle*, a pledge of peace. *Gislebert*, an illustrious pledge.—*Gibs*; *Camden*.

GIST OF ACTION.—The cause for which an action lies; the ground and foundation of a suit, without which it is not maintainable.

GIVE.—See **GIFT**.

GIVE, (in a contract). 2 N. Y. 153.
 — (in a conveyance). 5 Me. 227; 8 Cow. (N. Y.) 36, 40; 7 Johns. (N. Y.) 258, 259.
 — (in a conveyance, distinguished from "grant"). 2 Cai. (N. Y.) 188, 195.
 — (in an agreement). 22 Wend. (N. Y.) 140.
 — (in liquor law). 12 Bush (Ky.) 240.
 — (in a will). 4 Day (Conn.) 368; 9 Cush. (Mass.) 129.
 — (meaning "pay"). 71 Mo. 585.
 — (means "convey," as to lands). 71 Mo. 585.
 — (synonymous with "furnish" or "supply"). 12 Bush (Ky.) 240.
 — (not synonymous with "sell"). 14 Md. 184.

GIVE A DEED, (covenant to). 13 Johns. (N. Y.) 359.

GIVE A REWARD, (distinguished from "offering, promising and procuring a reward by way of bribe"). 4 Harr. (Del.) 559, 561.

GIVE AND BEQUEATH, (in a will). 8 Wheat. (U. S.) 538; 9 Cush. (Mass.) 519; 97 Mass. 504; 3 Watts (Pa.) 471.

GIVE AND DEVISE, (in a will). 6 Binn. (Pa.) 94.

GIVE AND GRANT, (in a deed). 1 Harr. & J. (Md.) 527, 532; 9 Wend. (N. Y.) 638; 4 Wheel. Am. C. L. 251; 1 Cro. 166; 1 Mod. 178; Co. Litt. 384 n.

GIVE, DEVISE AND BEQUEATH, (in a will). 3 Desaus. (S. C.) 287.

GIVE, GRANT AND CONFIRM, (in a marriage settlement). 3 Mod. 237.

GIVE, GRANT AND CONVEY, (in a deed). 1 Monr. (Ky.) 31; 2 Hill (N. Y.) 277; 4 Wheel. Am. C. L. 249.

GIVE, GRANT, SELL AND CONVEY, (in a deed). 59 Me. 157.

GIVE, RATIFY AND CONFIRM, (in a will). 2 Ld. Raym. 831.

GIVEN, (in a deed). Coxe (N. J.) 197, 198.
 — (in a statute). 2 Wheat. (U. S.) 198; 2 Gr. (N. J.) 287.

GIVEN AND GRANTED, (in a deed). 1 Iowa 282.

GIVEN, HEREBY, (in a will). 13 Ves. 379.

GIVEN TO THEM, (in a contract). 102 Mass. 253, 259

GIVER.—A donor; he who makes a gift.

GIVING RINGS.—A ceremony anciently performed in England by sergeants-at-law, at the time of their appointment. The rings were inscribed with a motto, generally in Latin. See **SERGEANTS-AT-LAW**.

GIVING TIME.—Extension of time to pay, given to a debtor beyond the time stipulated in the original contract. If done without the consent of the surety, indorser, or guarantor, it discharges him.

GLADIOLUS.—A little sword or dagger; a kind of sedge.—*Mat. Paris*.

GLADIUS.—This word, which is the Latin for "sword," was used as the symbol of "jurisdiction." A person created an earl was *gladio succinctus*, he having jurisdiction over his county. See **JUS GLADII**.

GLAIVE.—A sword, lance, or horseman's staff. One of the weapons allowed in a trial by combat.

GLANVILLE.—The work called *Tractatus de Legibus et Consuetudinibus Angliæ*, is generally attributed to Ranulph de Glanville, who was sheriff, justice itinerant, and afterwards chief justiciary under Henry II. He died at Acre, on an expedition to the Holy Land, in 1190. Foss Biog. Jur.

GLASS WITH CARE, THIS SIDE UP, (on box delivered to a common carrier). 11 Pick. (Mass.) 41.

GLASS-MEN.—Wandering rogues or vagrants. 1 Jac. I. c. 7.

GLAVEA.—A hand dart.—*Cowell*.

GLEANING, LEASING, or LES-ING.—The gathering of grain left on the ground by the reapers. It is decided that no right exists at common law for the poor to enter on a person's land and glean after harvest. Steel v. Houghton, 1 H. Bl. 51.

GLEBÆ ASCRIPTITII.—Villein-socmen, who could not be removed from the land while they did the service due. Bract. c. 7; 1 Reeves Hist. Eng. Law 269.

GLEBARIÆ.—Turfs dug out of the ground.—*Cowell*.

GLEBE.—In ecclesiastical law, a portion of land attached to a benefice as part of its endowment. (Co. Litt. 341 a; Phillim. Ecc. L. 1459; 2 Steph. Com. 714.) It is to be distinguished from the tithes payable to the benefice out of other lands. The rector may not commit waste in the glebe lands, unless with the sanction of both the patron and the ordinary. The glebe annexed to a rectory makes the rectory a corporeal hereditament, although the advowson of the rectory is an incorporeal hereditament.

GLEBE LANDS, (in a statute). 2 Munf. (Va.) 513.

GLISCYWA.—A fraternity. Leg. Athel. c. 12.

GLOMERELLS.—Commissioners appointed to determine differences between scholars in a school or university, and the townsmen of the place.—*Jacob*.

GLOSS—GLOSSA.—Remarks intended to illustrate a subject; interpretation; comment; explanation.—*Webster*.

Glossa viperina est quæ corrodit viscera textus (11 Co. 34): It is a poisonous gloss which corrupts the essence of the text.

GLOSSATOR.—A commentator or annotator of the Roman law.

GLOUCESTER, STATUTE OF.—The statute is the 6 Edw. I. c. 1, A. D. 1278. It takes its name from the place of its enactment, and was the first statute giving costs in actions.

GLOVE SILVER.—Extraordinary rewards formerly given to officers of courts, &c.; money formerly given by the sheriff of a county in which no offenders are left for execution, to the clerk of assize and judges' officers.—*Jacob*.

GLOVES.—It was an ancient custom on a maiden assize, when there was no offender to be tried, for the sheriff to present the judge with a pair of white gloves. It is an immemorial custom to remove the glove from the right hand on taking oath.—*Wharton*.

GLYN, or GLEN.—A hollow between two mountains; a valley. Co. Litt. 5b.

GO AT LARGE, (when cattle are authorized to). 1 Cow. (N. Y.) 88 n.

GO WITHOUT DAY.—See **EAT INDE SINE DIE**.

GOAT.—See **GOTE**.

GOD BOTE.—An ecclesiastical or church fine paid for crimes and offences committed against God.—*Cowell*.

GOD'S ACRE.—A churchyard.

GOD'S PENNY.—Earnest money given to a servant when hired. See **DENARIUS DEI**.

GODGILD.—That which is offered to God or His service.—*Jacob*.

GOGINGSTOLE.—A cucking stool (*q. v.*)

GOING THROUGH THE BAR.—The act of the chief of an English common law court in demanding of every member of the bar, in order of seniority, if he has anything to move. This was done at the sitting of the court each day in term, except special paper days, crown paper days in the Queen's Bench, and revenue paper days in the Exchequer. On the last day of term this order is reversed, the first and second time round. In the Exchequer the postman and tubman are first called on.

GOING TO THE COUNTRY.—When a party, under the common law system of pleading, finished his pleading by the words, "and of this he puts himself upon the country," this was called going to the country. It was the essential termination to a pleading which took issue upon a material fact in the preceding pleading.

GOLD AND SILVER, (in a statute). Wilberf. Stat. L. 124.

GOLD OR SILVER, (in revenue act). 3 Ex. D. 101, 105.

GOLDA.—A mine.—*Blount*. A sink or passage for water.—*Cowell*.

GOLDSMITHS' NOTES.—Bankers' cash notes (*i. e.* promissory notes given by a banker to his customers as acknowledgments of the receipt of money) were originally called, in London, goldsmiths' notes, from the circumstance that all the banking business in England was originally transacted by goldsmiths.—*Wharton*.

GOLDWIT, or GOLDWICH.—A golden mulct.

GOLIARDUS.—A jester or buffoon. Mat. Par. 1229.

GOOD.—(1) Valid; unobjectionable; sufficient; as a "good pleading." (2) Solvent; worthy of credit; as a "good house" or "firm." (3) Collectible; merchantable; as a "good bill" or "note." Other meanings appear in the following titles, in most of which, however, the word is used in its vernacular sense.

Good, (check certified as). 10 Wall. (U. S.) 648; 2 Duer (N. Y.) 121.

— (guaranty that promissory note is). 16 Barb. (N. Y.) 342; 14 Wend. (N. Y.) 231.

— (means "genuine"). 4 Metc. (Mass.) 43, 48.

GOOD ABEARANCE OR GOOD BEHAVIOR, (sureties for). 4 Bl. Com. 256.

GOOD ABEARING.—See **ABEARANCE**

GOOD AND COLLECTIBLE, (equivalent to "capable of being collected"). 1 Cush. (Mass.) 473.

— (note guaranteed to be). 18 Pick. (Mass.) 321; 19 Johns. (N. Y.) 69.

GOOD AND CONVENIENT, (in a statute). 54 Miss. 666.

GOOD AND LAWFUL DEED, CLEAR OF ALL INCUMBRANCES, (in a covenant). 7 Watts (Pa.) 227, 229.

GOOD AND LAWFUL MEN.—Such men as were qualified to act as jurors or witnesses.

GOOD AND LAWFUL MEN, (description of grand jury in an indictment). 1 Blackf. (Ind.) 396; 6 Halst. (N. J.) 203.

GOOD AND LAWFUL MEN, (in a statute). 6 Binn. (Pa.) 179, 185.

—— (in jury act). 6 Johns. (N. Y.) 332.

—— (in a precept to a sheriff). 3 Car. & P. 63.

GOOD AND MERCHANTABLE, (in a declaration). 1 Pick. (Mass.) 162.

GOOD AND PERFECT DEED, (in a covenant). 18 Miss. 615; 21 *Id.* 275.

GOOD AND SUFFICIENT CONVEYANCE, (covenant to execute). 5 Wend. (N. Y.) 654.

GOOD AND SUFFICIENT DEED, (covenant to execute). 2 Johns. (N. Y.) 595; 16 *Id.* 268; 9 N. Y. 535.

—— (in a bond). 6 Cal. 566, 573.

—— (in an agreement). 14 Me. 276, 279; 1 Gr. (N. J.) Ch. 526; 6 Halst. (N. J.) 110; Wright (Ohio) 644.

—— (in contract to sell). 22 Minn. 137.

GOOD AND SUFFICIENT DEED WITH COVENANTS OF WARRANTY, (in an agreement). 1 Zab. (N. J.) 651.

—— (means a "good and sufficient title"). Spenc. (N. J.) 214.

GOOD AND SUFFICIENT DEEDS, (in a statute). 8 Mass. 162, 181.

GOOD AND SUFFICIENT SECURITY, (in submission to arbitrators). 9 Johns. (N. Y.) 43.

GOOD AND SUFFICIENT TITLE, (in an agreement). 1 Halst. (N. J.) 222.

GOOD AND SUFFICIENT WARRANTY DEED, (covenant to execute). 4 Paige (N. Y.) 628.

—— (covenant to procure). 17 Wend. (N. Y.) 244.

—— (in a bond). 5 Mass. 494.

GOOD AND WARRANTY DEED, (in a covenant). 33 Vt. 470.

GOOD BARLEY, (distinguished from "fine barley"). 5 Mees. & W. 535.

GOOD CAUSE, (what is). 62 How. (N. Y.) Pr. 419.

—— (in a statute). 8 Nev. 165; 5 Ex. D. 307.

GOOD CAUSE SHOWN, (in railroad charter). 2 Gr. (N. J.) 145.

GOOD CONSIDERATION.—

As distinguished from "valuable consideration," a consideration founded on motives of generosity, prudence and natural duty; such as natural love and affection. See **CONSIDERATION**, § 7.

GOOD CONSIDERATION, (defined). 1 Baldw. (U. S.) 358; 1 Dall. (U. S.) 138; 7 Pet. (U. S.) 361.

—— (what is). 3 Co. 80.

—— (in a statute). Dwar. Stat. 753.

—— (in statute of frauds). 3 Cranch (U. S.) 140, 157; 1 Stew. & P. (Ala.) 262.

—— (when means "valuable consideration"). 23 Md. 219, 231.

GOOD CONSIDERATION, ME THEREUNTO MOVING, (in a deed). 3 Vt. 448.

GOOD CUSTOM COWHIDE, (promissory note payable in). Brayt. (Vt.) 77.

GOOD DRAWER AND PULLS QUIETLY IN HARNESS, (in warranty of a horse). 2 Dowl. & Ry. 10.

GOOD FAITH.—See **BONA FIDE**.

GOOD FAITH, (defined). 1 Dak. T. 387.

—— (in act to quiet possession of lands). 17 Ill. 253; 84 *Id.* 585.

—— (what is taking in). 20 Wend. (N. Y.) 19.

GOOD FOR THIS DAY ONLY, (in a railroad ticket). 60 Me. 512.

GOOD FRIDAY.—The Act 39 and 40 Geo. III. c. 42, passed for the better observance of Good Friday, provided that bills, &c., falling due on that day should be payable on the day preceding; and the 7 and 8 Vict. c. 15, § 3, provided that Good Friday and Christmas Day, and every such day of fast or thanksgiving appointed by her majesty shall, as regards bills of exchange and promissory notes, be treated and considered as Sunday. Good Friday is a holiday in the courts and offices of the Supreme Court. Jud. Act, 1875, Ord. lxi. r. 4. See **HOLIDAY**.

GOOD GRASS LAND, (in an agreement). Coxé (N. J.) 235.

GOOD JURY, (defined). L. R. 5 C. P. 165.

GOOD ORDER, (in bill of lading). 2 Blatchf. (U. S.) 116; 3 Iowa 532.

GOOD REASON, (in a statute). 49 Ala. 350.

GOOD RIGHT, FULL POWER AND LAWFUL AUTHORITY, (in a covenant). 3 Bos. & P. 565.

GOOD RIGHT TO CONVEY, (covenant of). 2 Wheat. (U. S.) 62 n.; 9 Wend. (N. Y.) 416; 4 Mau. & Sel. 53.

GOOD SAFETY, (in marine insurance policy). L. R. 5 C. P. 190.

GOOD SECURITY, (what is not). 3 Atk. 440, 444.

—— (in a statute). 16 Mass. 121, 129.

GOOD, SOUND, SUBSTANTIAL AND SERVICEABLE COPPER, (in a declaration). 4 Barn. & C. 108.

GOOD TENANTABLE REPAIR, (in a lease). 111 Mass. 531.

GOOD TITLE, (what is). 14 Eng. L. & Eq. 350.

—— (in an agreement). 103 Mass. 356, 359; 3 Stark. Ev. 1612 n.

GOOD TITLE AND RIGHT TO CONVEY, (in a covenant). 11 East 633.

GOOD, TO MAKE IT, (indorsed on a promissory note). 3 McCord (S. C.) 236.

GOOD UNINCUMBERED TITLE, (in a statute). 23 Barb. (N. Y.) 370.

GOOD WARRANTY DEED, (covenant to execute). 20 Johns. (N. Y.) 130.

GOOD WARRANTY DEED IN FEE-SIMPLE, (in a covenant). 2 Pa. 507.

GOOD WILL.—

§ 1. The good will of a business is the benefit which arises from its having been carried on for some time in a particular house, or by a particular person or firm, or from the use of a particular trade mark or trade name (*q. v.*) Its value consists in the probability that the old customers will continue to be customers, notwithstanding

a change in the firm or place of business. It is personal property. *Cruttwell v. Lye*, 17 Ves. 335; *Churton v. Douglas*, Johns. 174; *Sebast. Tr. M.* 180; *Robs. Bankr.* 512.

§ 2. **Personal.**—A good will is said to be personal when it depends on the personal character, *i. e.* the skill or reputation, of the person who carries on the business. In the case of a public house, baker's shop or the like, the good will is not personal, because it consists in the habit which the customers have of resorting to the house. Therefore, if a baker or publican mortgages his house of business without mentioning the good will, and the mortgagee sells the house as a going concern, thus obtaining the benefit of the good will, the mortgagor is not entitled to that part of the purchase-money which represents the value of the good will. *Ex parte Punnett*, 16 Ch. D. 226, following *Chissum v. Dewes*, 5 Russ. 29; *King v. M. R. Co.*, 17 W. R. 113.

§ 3. Questions of good will chiefly arise between an assignor and an assignee. An assignment of a good will implies a recommendation of the assignee by the assignor to his customers, and an agreement by him to abstain from all competition with the assignee. If A. carries on business under a firm name which is wholly or partially artificial (such as "A. & Z." or "A. & Co.") and assigns the good will of his business to B., then B. becomes entitled to the exclusive use of the firm name as against A., and against all the world, so that A. can neither complain of B.'s use of the name, nor use any name so resembling it, as to be calculated to represent to the world that he (A.) is carrying on the business which he assigned to B. (*Churton v. Douglas*, *ubi supra*; *Levy v. Walker*, 10 Ch. D. 436.) On the same principle A. is not allowed to solicit old customers of the business to deal with him, although he may deal with them if they come to him without solicitation. *Leggott v. Barrett*, 15 Ch. D. 306, overruling *Ginesi v. Cooper & Co.*, 14 Ch. D. 596.

§ 4. **Copyholds.**—In the English law of real property, where copyholds are granted for the lives of several persons, the first named life, or the first taker as he is called (*i. e.* the first named *cestui que vie*), is generally, though not invariably, the beneficial owner. By the special customs of a great number of manors, the first taker has the right to surrender his estate, and

thereby to bar all the rest. And it is frequently part of the custom that the life in possession, or the first of the lives in possession, shall have a veto upon any fresh creation of tenancies in remainder, without his assent or good will, for the manifesting of which there is frequently a customary ceremony, the object being to preserve to the beneficial owner the power of surrendering to the lord and taking a new estate for his own benefit. *Elt. Copyh.* 48.

GOOD WILL, (defined). 33 Cal. 620, 624; 44 N. H. 335, 343; 7 Abb. (N. Y.) Pr. 202, 203; 10 *Id.* 264, 269; 6 Bosw. (N. Y.) 354, 362; 19 Hun (N. Y.) 418, 422; 36 Ohio St. 522; 9 R. I. 250, 252; 4 Barn. & Ad. 592, 595 n.; 2 Madd. 193, 219; 3 Meriv. 441, 451.

— (effect of sale of). 19 How. (N. Y.) Pr. 14; 14 Ves. 468; 17 *Id.* 335; 1 Chit. Gen. Pr. 713.

— (in an agreement). 6 Barn. & C. 216; 3 Madd. 74.

— (in a lease). L. R. 10 C. P. 456.

— (in a statute). 2 Barn. & Ad. 341, 345.

— (on the death of one partner, survives to the other). 5 Ves. 539; 15 *Id.* 226; 1 Chit. Gen. Pr. 102 n.

GOODS.—This word "includes all chattels, as well reall as personall." (Co. Litt. 118b.) In practice, however, the term "goods" is confined to those chattels which are capable of manual delivery, such as furniture and merchandise. Assignments of goods, by way of sale or mortgage, are subject to various statutory regulations, as to which see BILL OF SALE; STATUTE OF FRAUDS. The two words "goods" and "chattels" are generally used together, to denote personal property, especially in the old books, and in old forms which have survived; thus, writs of execution against personal property refer to it as the "goods and chattels" of the judgment debtor. In writs of *fiery facias*, the term "goods and chattels" includes not only furniture, cattle, merchandise, &c., but also money, bank notes, bills of exchange, bonds and other securities for money (3 Steph. Com. 584), and leaseholds or other chattel interests in land; the wearing apparel, bedding and implements of trade of a judgment debtor (not exceeding a certain value) cannot be seized. See CHATTELS; CHOSE; EXECUTION; GROWING CROPS; PERSONAL PROPERTY.

GOODS, (general meaning of). 2 Watts (Pa.) 61, 65.

— (bank bills included under, in a statute). 2 Wend. (N. Y.) 327.

— (includes a building standing on land of another). 35 N. H. 484.

GOODS, (includes "chattels"). Co. Litt. 118 b.
 ——— (not synonymous with "chattels"). 1
 Chit. Gen. Pr. 90.
 ——— (does not include "fixtures"). 7
 Taunt. 188; 1 Chit. Gen. Pr. 90.
 ——— (contract for the sale of). 5 Barn. &
 Ald. 613; 2 H. Bl. 63; 3 Mau. & Sel. 179; 4 Id.
 262.
 ——— (in a grant). Shep. Touch. 97.
 ——— (in a policy of insurance). 2 Johns.
 (N. Y.) Cas. 77, 120; 12 Wend. (N. Y.) 466.
 ——— (in a statute). Dwar. Stat. 719.
 ——— (in a will). 1 Am. Dec. 294 n.; 3 Atk.
 61, 63; 1 Cox Ch. 362; 1 P. Wms. 267; 4 Com.
 Dig. 154; 1 Rop. Leg. 250.
 ——— (obtaining, by false pretences). 2
 Leach C. C. 520.
 ——— (promissory note payable in). 7 Johns.
 (N. Y.) 461; 5 Wend. (N. Y.) 393; 7 Id. 311;
 13 Id. 95; Ohio Const. R. 465.
 GOODS, ALL MY, (in a will). 1 Cro. 6.
 GOODS, ALL MY WORLDLY, (in a will). 1
 Chit. Gen. Pr. 355.
 GOODS, ALL THE RESIDUE OF MY, (in a will).
 1 Cro. 386.
 GOODS, ALL THE REST OF MY WORLDLY, (in
 a will). 7 Bing. 664.

GOODS AND CHATTELS. — See GOODS.

GOODS AND CHATTELS, (what included under,
 generally). 1 Chit. Gen. Pr. 89.
 ——— (what are not). 9 East 215; 5 Price
 217.
 ——— (bills of exchange are). 2 Barn. &
 Ald. 327; 6 Bing. 363, 371; 4 Moo. & P. 36.
 ——— (bonds and mortgages are). 1 Harr.
 (N. J.) 54.
 ——— (a bond is not). 1 Dyer 5 b, n.
 ——— (capital stock of a corporation is not).
 11 C. E. Gr. (N. J.) 398.
 ——— (includes a "bond and warrant"). 4
 Mod. 156, 157.
 ——— (includes "coin"). 3 Ohio St. 575.
 ——— (growing crops are). 1 Harr. (N. J.)
 81; 7 Moo. 231.
 ——— (when includes "money"). 12 Wend.
 (N. Y.) 586.
 ——— (things in action are), 1 Atk. 165, 177.
 ——— (in administrator's bond). 1 Litt. (Ky.)
 99.
 ——— (in a declaration). 2 Ld. Raym. 1410.
 ——— (in an execution). 7 Mart. (La.) n. s.
 331.
 ——— (in an indictment). 4 Gray (Mass.)
 416, 418; 1 Binn. (Pa.) 201.
 ——— (in bankrupt act). 5 Bos. & P. 67, 70.
 ——— (in a statute). 19 Johns. (N. Y.) 73.
 ——— (in statute of frauds). 3 Daly (N. Y.)
 495.
 ——— (in statute against larceny). 26 Ohio
 St. 400.
 ——— (in a will). Amb. 612; 2 Eden 201;
 1 Vern. 30; 11 Ves. 666; 1 Ves. Sr. 363.
 ——— (possession of, what is). 7 T. R. 228,
 235.
 ——— (taking of, to constitute larceny). 39
 Ull. 233.
 GOODS AND CHATTELS, ALL OTHER UNBE-
 QUEATHED, (in a will). 1 Ves. 64.

GOODS AND CHOSSES IN ACTION, (mortgage of).
 1 Wils. 260.
 GOODS AND EFFECTS, (in a statute). 83 Pa.
 St. 126.
 GOODS AND EFFECTS, BOTH REAL AND
 PERSONAL, (in a devise). 4 Wheel. Am. C. L.
 363.
 GOODS AND MERCHANDISE, (in a declaration).
 2 Ld. Raym. 1450.
 ——— (includes "specie"). 14 Wend. (N.
 Y.) 399.
 ——— (shares in an incorporated company
 are). 20 Pick. (Mass.) 9.
 GOODS AND MOVABLE EFFECTS, (in a will).
 1 Russ. 146.
 GOODS AND MOVABLES, (in a will includes
 "bonds"). 1 Am. Dec. 293.
 GOODS AND THINGS OF EVERY KIND, (in a
 will). 2 Atk. 113.
 GOODS AT RISK OF SELLER FOR TWO MONTHS,
 (in contract of sale). L. R. 7 Q. B. 436.
 GOODS, CHATTELS AND EFFECTS, (fixtures
 are). 4 Barn. & Ald. 206; 1 Crompt. M. & R.
 266, 275.
 ——— (in a deed of assignment). 2 Watts
 (Pa.) 61.
 GOODS, CHATTELS AND PROPERTY, (in a mar-
 riage settlement). 4 Munf. (Va.) 346.
 GOODS, CHATTELS, CLOTHING, &c., (in a will).
 4 Russ. 360.
 GOODS, CHATTELS, PLATE, &c., (in a will).
 Pr. Ch. 8.
 GOODS, CHATTELS, RIGHTS AND CREDITS, (in
 a will). 2 H. Bl. 444.
 GOODS, CHATTELS, SECURITIES FOR MONEY,
 AND PERSONAL ESTATE, (in a will). 2 W. Bl.
 1301, 1307.
 GOODS, EFFECTS AND CREDITS, (in a statute).
 5 Mass. 183, 188; 8 Pick. (Mass.) 555, 558.
 GOODS, EFFECTS OR CREDITS, (what are not).
 9 Mass. 537.
 ——— (in a statute). 2 Mass. 91, 92.
 GOODS, FOR OR RELATING TO THE SALE OF,
 (in a statute). 3 East 303; 8 Id. 242.
 GOODS, HOUSEHOLD, (in a will). 3 Atk. 369;
 2 Vern. 331, 747; 2 Com. Dig. 661.
 GOODS, HOUSEHOLD, AND HOUSEHOLD STUFF,
 (in marriage settlement). 2 P. Wms. 302.
 GOODS OR CHATTELS, (bank notes are not).
 2 Zab. (N. J.) 207.
 GOODS OR MERCHANDISE, (in a statute con-
 cerning carriers). 45 Barb. (N. Y.) 218.
 GOODS OR MOVABLES, (in a will). 1 Yeates
 (Pa.) 101; 4 Wheel. Am. C. L. 386.
 GOODS, PERSONAL, (in crimes act). 5 Mas.
 (U. S.) 544.
 GOODS, SPECIE AND EFFECTS, (in a policy of
 insurance). 3 Doug. 419.

GOODS SOLD AND DELIVER- ED.—The name of the action of *assumpsit* brought by the seller of goods against the buyer, for the price.

GOODS, WARES AND MERCHANDISE, (contract
 for the sale of, what is not). 118 Mass. 279.
 ——— (fixtures are not). 12 Moo. 213; 1
 Tyrw. 959.
 ——— (growing annual crops are). 10 Barn.
 & C. 446.

GOODS, WARES AND MERCHANDISE, (growing potatoes are). 5 Barn. & C. 829.

— (growing turnips are not). 2 Taunt. 38.

— (growing trees are). 9 Barn. & C. 561.

— (includes "gold coin"). 1 Woolw. (U. S.) 217.

— (includes "cattle"). 20 Mich. 353.

— (lottery tickets are). 2 Whart. (Pa.) 155.

— (shares of stock in a corporation are). 2 Mo. App. 61.

— (silver dollars are, in Revenue Act of 1799, § 50). 2 Mas. (U. S.) 407.

— (treasury checks are not). Dudley (Ga.) 28.

— (in act of incorporation). 6 Wend. (N. Y.) 335, 355, 363.

— (in a lease). 24 Alb. L. J. 36.

— (in a statute). 1 Dall. (U. S.) 205.

— (in statute of frauds). 4 Wheat. (U. S.) 89 n.; 2 Stark. Ev. 607.

GOODS, WARES OR MERCHANDISE, (in revenue act). 4 Blatchf. (U. S.) 136; 2 Sumn. (U. S.) 362.

— (in statute of frauds). 3 Daly (N. Y.) 495.

GOODS, WORLDLY, (in a will). 1 Munf. (Va.) 537, 548.

GOOLE.—A breach in a sea-wall or bank; a passage worn by the flux and reflux of the sea. 16 and 17 Car. II. c. 11.

GORCE, or GORS.—A wear, pool, or pit of water.—*Termes de la Ley*.

GORE.—A narrow slip of land.—*Kenn. Par. Ant.* 393; *Cowell*.

GOSSIPRED.—In the canon law, compaternity; spiritual affinity.

GOTE.—A ditch, sluice, or gutter. Stat. 23 Hen. VIII. c. 5.

GOVERNMENT.—That form of fundamental rules and principles by which a nation or state is governed. Locke Gov.; Paley Polit. Phil.; Smith Wealth Nat.; Montesq.

GOVERNMENT, (treason against). 1 Dall. (U. S.) 57.

GOVERNMENT AND ORDERING OF HIS CHILDREN, (in a will). 1 Dyer 26 b.

GOVERNMENT ANNUITIES SOCIETIES.—These societies are formed in England under 3 and 4 Will. IV. c. 14, to enable the industrious classes to make provisions for themselves by purchasing, on advantageous terms, a government annuity for life or term of years. By the 16 and 17 Vict. c. 45, this act, as well as the 7 and 8 Vict. c. 83, amending it, were repealed, and the whole laws in relation to the purchase of government annuities through the medium of saving banks, was consolidated. And by the 27 and 28 Vict. c. 43, additional facilities were afforded for the purchase of such annuities, and for assuring payments of money on death.—*Whurton*.

GOVERNMENT DE FACTO, (defined). 43 Ala. 204, 213.

GOVERNMENT OR OTHER STOCK, (when includes "railway shares"). Wilberf. Stat. L. 263, 264.

GOVERNMENT SECURITY OR SECURITIES, (does not include "exchequer bills"). 3 Younge & Coll. C. C. 397.

GOVERNOR, (means chief executive officer of a State or Territory). 79 N. C. 230.

GRACE.—A faculty, license, or dispensation; also general and free pardon by act of parliament. As to "days of grace," see that title

GRACE, DAYS OF, (what are). 1 South. (N. J.) 1, 17.

— (inland bill of exchange entitled to). 4 Yerg. (Tenn.) 210.

— (when promissory note is not entitled to). 4 Mass. 245.

GRADIENT.—Moving by steps; the deviation of railways from a level surface to an inclined plane.

GRADING A HIGHWAY, (what is). 12 R. I. 241, 244.

GRADUATES.—Scholars who have taken a degree in a college or university.

GRADUS.—A step or degree; a degree in relationship; a generation. Also, a port; a pulpit; a year.—*Du Cange*.

GRADUS PARENTELÆ.—A pedigree; a table of relationship.

GRAFFER.—A notary or scrivener. Stat. 5 Hen. VIII. c. 1.

GRAFFIO—GRAVIO.—A landgrave or earl.—*Cowell*.

GRAFFIUM.—A writing-book, register, or cartulary of deeds and evidences.—*Cowell*.

GRAIL.—A gradual, or book containing some of the offices of the Romish church. The holy grail was the vessel out of which our Lord was believed to have eaten at the Last Supper.—*Cowell*.

GRAIN.—(1) In Troy weight, the twenty-fourth part of a pennyweight. (2) Any kind of corn sown in the ground. See AWAY-GOING CROP; EMBLEMENTS; GROWING CROPS.

GRAIN, (defined). 5 Dutch. (N. J.) 357, 361.

GRAIN, OTHER, (in a statute). 34 Ga. 455.

GRAINAGE.—An ancient duty in London, under which the twentieth part of salt imported by aliens was taken.

GRAMMAR SCHOOL, (what is). 16 Mass. 121; 2 Russ. 501.

GRAMMAR SCHOOL, (in a will). Jac. 474, 484.
GRAMMAR SCHOOLS, (in State constitution).
103 Mass. 94, 97.

**Grammatica falsa non vitiat char-
tam** (9 Co. 48): False grammar does not
vitiare a deed.

GRANARY, (defined). 47 N. H. 101, 104.

GRANATARIUS.—An officer who kept
the corn-chamber in a religious house.

GRAND ASSIZE.—A peculiar species
of trial by jury, introduced in the time of Henry
II., giving the tenant or defendant in a writ of
right the alternative of a trial by battle or by
his peers. Abolished by 3 and 4 Will. IV. c.
42, § 13.

GRAND BILL OF SALE.—See BILL
OF SALE, § 3.

GRAND BILL OF SALE, (defined). 3 Kent
Com. 133.

GRAND CAPE.—See CAPE.

**GRAND COSTUMIER OF NOR-
MANDY**.—An ancient book of great author-
ity, containing the ducal customs of Normandy,
probably compiled since the time of Richard I.
Hale C. L. c. 6.

GRAND DAYS.—Those which are sol-
emnly kept in every term in the inns of court
and chancery, viz., in Easter term, Ascension
day; in Trinity term, St. John Baptist; in Mich-
aelmas term, All-Saints; in Hillary term, the
Feast of the Purification of the Blessed Virgin.
And these are no days in court.—*Termes de la
Ley*.

GRAND DISTRESS.—A writ formerly
issued in the real action of *quare impedit*, when
no appearance had been entered after the attach-
ment; it commanded the sheriff to distrain the
defendant's lands and chattels in order to compel
appearance. It is no longer used, 23 & 24 Vict.
c. 126, § 26, having abolished the action of *quare
impedit*, and substituted for it the procedure in
an ordinary action.

GRAND JURY.—An inquisition
composed of not less than twelve nor
more than twenty-three good and lawful
men of a county, returned by the sheriff
to every session of the peace, and every
commission of oyer and terminer, and of
general gaol delivery, who inquire, pre-
sent, do and execute all those things
which on the part of the administration
of justice shall be commanded them.
Grand jurymen at the Assize Courts ought
to be freeholders, but to what amount is
uncertain. (2 Hale P. C. 154.) The grand
jury are previously instructed in the arti-

cles of their inquiry, by a charge from the
judge. They then withdraw to sit, and
receive indictments, which are preferred
in the name of the government, but at the
suit of any private prosecutor, and they
are only to hear evidence on the part of
the prosecution: for the finding of an
indictment is only in the nature of an
inquiry or accusation, afterwards to be
tried; and the grand jury only inquire,
upon their oaths, whether there be suffi-
cient cause to call upon the party accused
to answer it. When the grand jury have
heard the evidence, if they think it a
groundless accusation, they indorse upon
the bill of indictment, "not a true bill,"
or "not found;" the bill is then thrown
out, and the party accused, if under arrest,
discharged. But a fresh bill may after-
wards be preferred to a subsequent grand
jury. If they are satisfied of the truth of
the accusation, they indorse "a true bill;"
the indictment is then found, and the party
stands indicted. A majority of the grand
jury must agree, *i. e.* not less than twelve.
4 Steph. Com. (7 edit.) 361. See JURY.

GRAND JURY, (powers and duties of). 5 Am.
L. T. 255; 4 Bl. Com. 302, 303; 4 Steph. Com.
361-363.

GRAND LARCENY.—In English
criminal law, the stealing of property
above the value of twelve pence, while
stealing less was petit larceny. It was
abolished by 7 and 8 Geo. IV. c. 29, § 2.
In some of the States the distinction be-
tween grand and petit larceny is still re-
tained, but the money value of the property
stolen must be much higher to render the
offence grand larceny: in New York, for
instance, it is over \$25.

GRAND LARCENY, (defined). 1 Bish. Cr. L.
§ 679.

GRAND SERJEANTY.—

§ 1. "Tenure by grand serjeanty, is where a
man holds his lands or tenements of our sovereign
lord the king by such services as he ought to do
in his proper person to the king; as to carry the
banner of the king, or his lance, or to lead his
army, or to be his marshal, or to carry his sword
before him at his coronation, or to be his server at
his coronation, or his carver, or his butler, or to be
one of his chamberlains at the receipt of his
exchequer, or to do other like services, &c. And
the cause why this service is called grand ser-
jeanty is for that it is a greater and more worthy
service than the service in the tenure of *escuage*."
Litt. § 153.

§ 2. The tenure by grand serjeanty still continues, though it is no longer a tenure by knight's service, the Stat. 12 Car. II. c. 24, having converted it into free and common socage, merely preserving the honorary services incident to it. Co. Litt. 108a, n. 1. See CORNAGE; KNIGHT'S SERVICE; PETTY SERJEANTY; SERJEANT; TENURE.

GRAND SERJEANTY, (defined). 2 Bl. Com. 73, 77, 78; 1 Steph. Com. 210.

— (tenure by). 1 Steph. Com. 200, 201.

GRANDCHILD.—The child of one's child.

GRANDCHILDREN, (when includes "great-grandchildren"). 2 Eden 194; 2 Com. Dig. 655.

— (when does not include "great-grandchildren"). 3 Barb. (N. Y.) Ch. 488, 505; 3 Ves. & B. 59.

— (entitled to take under a bequest to "issue" in a will). 3 Ves. 421.

— (when take under a will *per stirpes*). Toll. Ex. 300.

— (in a deed). 4 Desaus. (S. C.) 268.

— (in a will). 7 Hill (N. Y.) 305; 3 N. Y. 538; 8 Paige (N. Y.) 375; 23 Wend. (N. Y.) 518; 5 Binn. (Pa.) 601; 5 Serg. & R. (Pa.) 38; 2 So. Car. 509, 511; 2 Sneed (Tenn.) 618; 2 Bouv. Inst. 441; 4 Wheel. Am. C. L. 370; 8 Com. Dig. 427.

GRANDDAUGHTER, (in a will). 8 Com. Dig. 428.

GRANDFATHER.—The father of either of one's parents.

GRANDMOTHER.—The mother of either of one's parents.

GRANGE.—A farm furnished with barns, granaries, stables, and all conveniences for husbandry. Co. Litt. 5a.

GRANGIARIUS.—A keeper of a grange or farm.

GRANGIA.—A grange. Co. Litt. 5a.

GRANITE BUILDING, (in a policy of insurance). 120 Mass. 225.

GRANT.—

§ 1. In conveyancing.—"This word is taken largely where anything is granted or passed from one [the grantor] to another [the grantee]. And in this sense it doth comprehend feoffments, bargains and sales, gifts, leases, charges, and the like; for he that doth give or sell doth grant

also. . . . And so some grants are of the land or soil itself; and some are of some profit to be taken out of or from the soil, as rent, common, &c. And some are of goods and chattels; and some are of other things, as authorities, elections, &c." Shep. Touch. 228; Perk. Prof. Bk. § 57.

§ 2. Special uses of the word.—But though "grant" was always an operative word of the most general effect and extent (1 Davids. Conv. 73), it is especially used in the following cases: (1) It always was and is still the appropriate word for conveyance, *inter vivos*, of incorporeal hereditaments, (such as commons, easements, &c.) remainders, reversions, and generally of freehold estates not lying in livery, and consequently not the subject of livery of seisin and feoffment. (*Id.* 72. See LIVERY.) (2) By the Act 8 and 9 Vict. c. 106, § 2, and also, by statute, in New York, Massachusetts, and several other States, all corporeal hereditaments, as regards the conveyance of the immediate freehold thereof, are deemed to lie in grant as well as in livery, so that "grant" is now not only a sufficient, but a proper technical word of conveyance of any freehold estate, (*Id.* 74; 2 *Id.* 176,) and a simple deed of grant has superseded the old-fashioned feoffments, leases and releases, &c., which were formerly required to convey freehold estates in possession. (See CONVEYANCE; FEOFFMENT; LEASE AND RELEASE.) The word "grant" is not absolutely necessary in a deed of grant, for other words indicating an intention to grant will answer the purpose. Wms. Real Prop. 203, where a form of the modern deed of grant is given.*

§ 3. Of copyholds.—"Grant" is applied to copyhold lands to signify that the lord accepts a person as tenant of the land by copy of court roll. An ordinary grant takes place where the lord admits a tenant in pursuance of a surrender by the preceding tenant, or on his death. A voluntary grant is where copyhold land is "in hand," i. e. is in the possession of the lord free from the rights of any tenant, and the lord regrants the land to be held by copy of court roll. Elt. Copyh. 55; Co. Copyh. § 34. See DEMISE; EXTINGUISHMENT.

*The English Conveyancing Act, 1881, (§ 49,) declares that the use of the word "grant" is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal, in conveyances made before or after the commencement

of the act. As mentioned in § 2, *supra*, the word was not necessary even before this enactment. The operative word used in the statutory forms given in the act is "convey."

§ 4. **By the crown, or government.**—"Grant" is the term commonly applied to rights created or transferred by the crown, or government, *e. g.* grants of pensions, patents, charters, franchises. Chit. Prerog. 384.

§ 5. **Probate and administration—General.**—A grant of probate or letters of administration is made when probate or administration is issued from the proper court. A grant is said to be general when it is unrestricted, and limited when it is confined to a part of the deceased's property, or to a period of time, or to a particular object. Browne Prob. Pr. 214 *et seq.*

§ 6. **Limited.**—Where a married woman has made a will under a power, or disposing of her separate estate, the court will grant probate limited to the particular property. *Id.* 216.

§ 7. **De bonis non.**—If an executor or administrator dies or becomes incapable to act before he has administered the estate, the court will appoint a new representative by granting probate or letters of administration *de bonis non* [*administratis*], "of the goods not administered," so that the new representative may complete the administration. Probate *de bonis non* is only granted (in England) where the deceased executor has specially appointed a person to be executor of the original testator's will, and not of his own. *Id.* 217.

Grants limited in time.

§ 8. **Durante viduitate, minoritate, &c.**—The commonest instances are grants of probate limited to the life or widowhood of the executor or executrix (Coote Pro. Pr. 41 *et seq.*); grants of administration—(1) "till a will be found," where the will has been lost since the death of the testator; (2) *durante minoritate, absentia* or *dementia*, "during the minority," "absence" or "insanity" of the executor or person entitled to a general grant of administration, hence sometimes called "grants for the use and benefit *jus habentium*," *i. e.* for the benefit of persons "having a right" to a grant (*Id.* 107, 116.) An administrator *durante minore ætate*, (and, *semble*, every other administrator for a limited period,) has all the powers of an ordinary administrator. (*In re Cope*, 16 Ch. D. 49; *see* GUARDIAN, § 13;) (3) *pen-*

dente lite, where a suit touching the validity of the will of the deceased is pending. Browne Prob. Pr. 224.

§ 9. **Cessate.**—When the time of a limited grant has expired, the person entitled may apply for a general and regular grant, this is called a supplemental or *cessate* grant. *Id.* 242.

Grants limited to a particular object

§ 10. The commonest instances are—(1) grants of administration *ad litem*, limited to the purpose of commencing, carrying on, or defending proceedings, involving a certain part of the deceased's estate; (2) grants of administration *ad colligenda bona* [*defuncti*], "to collect the goods [of the deceased]," where the estate is of a perishable or precarious nature, and regular probate or administration cannot be granted at once; (3) grants *cæterorum* [*bonorum*], "of the rest [of the goods]," where a grant limited to part of the estate, or to a particular purpose, has already been granted: thus, where probate is granted of the will of a married woman, disposing of her separate property, (*supra*, § 6,) the husband is entitled to a grant *cæterorum*, *i. e.* to letters of administration of all her goods, except what she had power to dispose of by will.

§ 11. **"Save and except."**—A grant "save and except" is the reverse of a *cæterorum* grant. Thus, in the foregoing example, if the grant were made to the husband first, it would be a grant of administration to all his wife's goods and chattels, "save and except" such as she had power to dispose of, and had disposed of. Browne Prob. Pr. 237 *et seq.*; Coote Pro. Pr. 135 *et seq.*

GRANT, (defined). 5 Mass. 438, 471; 8 Johns. (N. Y.) 385; 16 N. Y. 71, 75; 42 Wis. 532, 536; 1 Chit. Gen. Pr. 310.

— (how construed). 7 Pick. (Mass.) 344, 461; 8 Johns. (N. Y.) 495.

— (by government). 1 Black (U. S.) 358; 6 Cranch (U. S.) 87, 135; 7 *Id.* 164; 10 Pet. (U. S.) 334, 731; 9 Pick. (Mass.) 520.

— (does not imply a warranty). 1 Cro. 809.

— (not equivalent to "bargain, sell, assign, transfer and set over"). 15 East 530, 538.

— (presumption of). 19 Wend. (N. Y.) 309.

— (to enter on lands, distinguished from "license"). 3 Duer (N. Y.) 255, 258.

GRANT, (treaty of cession is). 9 Pet. (U. S.) 711.

— (what will pass under). 43 Cal. 502.

— (what words in a deed will operate as).

5 T. R. 124.

— (in a deed). 5 Co. 16, 17; Freem. 414; 2 Saund. 97; 1 Ves. Sr. 101; 3 Wils. 25, 28.

— (in a lease). 5 Serg. & R. (Pa.) 421, 424; 5 Barn. & Ald. 322, 326.

— (in a will). 3 Atk. 731, 735.

— (in treaty between United States and Spain). 8 Pet. (U. S.) 436, 450; 12 Id. 410.

GRANT AND CONVEY, (implies a warranty). 2 Atk. 228.

GRANT AND DEMISE, (are words of implied covenant). 2 Bouv. Inst. 402; Amb. 247, 250; Cro. Jac. 73.

— (in a lease). 8 Cow. (N. Y.) 36; 7 Johns. (N. Y.) 259 n.; 4 Wend. (N. Y.) 502.

GRANT AND ENFEOFF, (in a deed). 16 Serg. & R. (Pa.) 98.

GRANT AND MAKE OVER, (in a deed). 3 Johns. (N. Y.) 484.

GRANT AND RELEASE, (in a deed). 3 Mod. 296, 301.

GRANT, BARGAIN, AND SELL.

—Operative words in conveyances of real estate. See BARGAIN AND SALE, § 2.

GRANT, BARGAIN, AND SELL, (as having force of general warranty). 4 Dall. (U. S.) 440.

— (do not imply a warranty of title). 4 Wheel. Am. C. L. 52.

— (in an agreement). 1 Yeates (Pa.) 398; 4 Yeates (Pa.) 295.

— (in a deed). 21 Ill. 220; 32 Id. 348; 6 Pick. (Mass.) 499; 34 Mo. 390; 60 Id. 138; 1 Murph. (N. C.) 343; 4 Oreg. 235; 2 Binn. (Pa.) 95; 3 Pa. 313; 1 Rawle (Pa.) 377; 11 Serg. & R. (Pa.) 109; 2 Bouv. Inst. 401; 3 Wheel. Am. C. L. 382.

— (in a statute). 2 Ala. 535; 5 Id. 586; 12 Id. 159; 19 Ill. 235.

GRANT, BARGAIN, SELL, ALIEN, AND CONFIRM, (in a deed). 2 Cai. (N. Y.) 188, 195.

GRANT, BARGAIN, SELL, AND CONVEY, (in a deed). 25 Cal. 175.

GRANT, COVENANT, AND AGREE, (sufficient to make a lease for years). Cro. Jac. 91.

GRANT, OR DEMISE, (in a lease). 1 Chit. Gen. Pr. 344.

GRANT, PAROL, (of land). 3 Watts (Pa.) 37.

GRANT TO USES.—The common grant with uses superadded, which has become the favorite mode of transferring realty in England. —Wharton.

GRANTED AND DEMISED, (in a lease). 9 Ves. 330.

GRANTED AND TO FREIGHT LET, (in a charter party). 2 Brod. & B. 410, 428.

GRANTED, BARGAINED, AND SOLD, (in an agreement). 1 Halst. (N. J.) 222.

GRANTEE.—He to whom any grant is made.

GRANTEE, (as synonymous with "purchaser of the estate"). 1 Cow. (N. Y.) 501, 509.

GRANTEE OF PATENT, (defined). 4 Blatchf. (U. S.) 211.

GRANTOR.—He by whom a grant is made.

GRANTOR, (in a statute, construed to mean "grantee"). 2 Ala. 535.

GRANTORS, (in a deed). 5 Cush. (Mass.) 359, 365.

GRANTZ.—Grandeas.—Jacob.

GRASS-HEARTH.—The feudal service of turning up the earth with a plow.—Kenn. Par. Ant. 496.

GRASSON, or GRASSUM.—A fine paid upon the transfer of a copyhold estate.

GRATIFICATION.—A reward given voluntarily for some service or benefit rendered without being requested so to do, either expressly or by implication.—Bouvier.

GRATIS.—Without fee, or reward.

GRATIS DICTUM.—A voluntary statement.

GRATUITOUS BAILMENT.—See BAILMENT, § 2.

GRATUITOUS DEEDS.—Instruments made without binding consideration.

GRAVA.—A little wood or grove. Co. Litt. 4b.

GRAVAMEN.—The substantial grievance or complaint upon which the action is founded.

GRAVARE ET GRAVATIO.—An accusation or impeachment. Leg. Ethel. c. 19.

GRAVE.—The place of interment of a dead body. As to the offence of violating a grave, see CORPSE; DEAD BODY.

GRAVEL AND CLAY PITS, (in a statute). 126 Mass. 177, 182.

GREAT BODILY INJURY, (assault with intent to do). 9 N. W. Rep. 362.

GREAT CARE, (defined). 8 Barb. (N. Y.) 368, 379; 6 Duer (N. Y.) 633; 20 N. Y. 65; 31 Pa. St. 512.

GREAT CATTLE.—All manner of beasts except sheep and yearlings. 2 Rolle 173.

GREAT CHARTER.—Magna Charta (q. v.)

GREAT-GRANDCHILDREN, (in a will). 1 Cox Ch. 248; 8 Com. Dig. 428.

GREAT OAKS, GROWING AND BEING, (in a lease). 3 Dyer 374b.

GREAT SEAL.—

§ 1. By the Act of Union of England and Scotland, (5 Anne c. 8, art. 24.) it is provided that there be one Great Seal for the United Kingdom, to be used for sealing writs to elect and summon the parliament, and for sealing all treaties with foreign States, and all public acts, instruments and orders of State which concern the whole United Kingdom, and in all other matters relating to England, as the Great Seal of England was then used.

§ 2. The Great Seal is affixed to documents in pursuance of a warrant (*q. v.*) See Great Seal Acts, 1851 and 1880, and the Crown Office Act, 1877.

§ 3. The office of Lord Chancellor is created by delivery of the Great Seal. See CHANCELLOR, § 3.

§ 4. The Great Seal Patent Office is the office in which charters, grants of office, pensions and annuities, licenses of denization, licenses for theatres, and certain other licenses are prepared and issued. Letters-patent for inventions were also formerly issued from this office, but they are now issued by the commissioners of patents. Rep. Comm. Fees 8, 25. By Stat. 37 and 38 Vict. c. 81, power is given to abolish the office of clerk of the patents. See, also, Great Seal Act, 1880, § 5. See CROWN OFFICE IN CHANCERY; SEAL.

GREAT TITHES.—These are so called to distinguish them from tithes often granted by the name of small tithes to a vicar. It is difficult to define them with certainty. Thus much, however, is clear, that of the three kinds of tithes—mixed, personal, and predial—the two former are small tithes; and of the latter, it seems that tithes of corn, hay, wood, and of other herbs which are sown in large quantities, such as flax, hemp, &c., are great tithes. See Bac. Abr. Tythes; Com. Dig. Dimes (G); 2 Steph. Com. (7 edit.) 726.

GREATER NUMBER, ELECTED BY THE, (in a declaration). 2 Dyer 113 b.

GREATER PART OF THEM IN INTEREST, (in a statute). 119 Mass. 583.

GREATER PART OF THOSE SO CONGREGATED, (equivalent to a majority of the voices of those assembled.) 1 Barn. & C. 492, 499.

GREE.—Satisfaction for an offence committed or injury done.—*Cowell.*

GREEN CLOTH.—In England, the counting-house of the king's household was commonly called the "Green Cloth," in respect of the green cloth upon the table whereat the lord steward, the treasurer of the king's house, and other inferior officers sat: (1) for daily taking the accounts for all expenses of the household; (2) for making provisions for the household, according to the laws and statutes of the realm; (3) for making of payments for the same; (4) for the good government of the king's servants; (5) for payment of the wages of the king's servants. The officers of the counting-house never held plea of anything. (4 Inst. 131.)—*Wharton.*

GREEN GRAIN IN THE GROUND, (in a contract for the sale of land). Sax. (N. J.) 563.

GREEN SILVER.—A feudal custom in the manor of Writtel, in Essex, where every tenant whose front door opens to Greenbury shall pay a half-penny yearly to the lord, by the name of green silver or rent.—*Cowell.*

GREEN WAX.—Estreats delivered to a sheriff out of the exchequer, under the seal of the court, which was impressed upon green wax, to be levied. Stat. 7 Hen. IV. c. 3.

GREENBACKS, (defined). 61 Ala. 282; 23 Ind. 21, 23.

GREENHEW, or GREENHUE.—Vert in forests, &c. Manw. 2, c. vi. n. 5.

GREGORIAN CODE.—See CODEX GREGORIANUS.

GREGORIAN EPOCH.—The time from which the Gregorian calendar or computation dates, *i. e.* from the year 1582.

GREMIUM.—Bosom. A term anciently used (*de gremio mittere*) to denote a person sent by an ecclesiastical corporation or body. A *littere mittere*, to send from his side, was one sent by an individual; as, a legate sent by the pope.—*Du Cange; Spel. Gloss.*

GRESSUME.—See GRASSON.

GRETNA GREEN MARRIAGE.—A marriage celebrated at Gretna, in Dumfries (bordering on the county of Carlisle), in Scotland. By the law of Scotland, a valid marriage may be contracted by consent alone, without any other formality. When the Marriage Act, 26 Geo. II. c. 33, rendered the publication of banns (or a license) necessary, in England, it became usual for persons who wished to marry clandestinely, to go to Gretna Green, the nearest part of Scotland, and marry according to the Scotch law; so a sort of chapel was built at Gretna Green, in which the English marriage service was performed by the village blacksmith. But by 19 and 20 Vict. c. 96, § 1, after 31st December, 1856, no marriage contracted in Scotland by declaration, acknowledgment, or ceremony is valid, unless one of the parties had, at the date thereof, his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage, any law, custom, or usage to the contrary notwithstanding.—*Wharton.*

GREVA.—Sand or beach; sea-shore.—*Cowell.*

GREVE.—A word of power or authority.—*Cowell.*

GRIEVED.—Aggrieved (*q. v.*)

GRIEVOUS BODILY HARM.—See MALICIOUS INJURIES TO THE PERSON.

GRIEVOUS BODILY HARM, (what is). 1 Russ. & Ry. 362.

— (in a statute). Holt 469.

GRINDSTONE, (in a declaration). 12 Gray (Mass.) 375.

GRITH.—Peace; protection.—*Termes de la Ley*.

GRITHBRECHE.—Breach of the peace.—*Cowell*.

GRITHSTOLE.—A place of sanctuary.—*Cowell*.

GRONNA.—A deep pit or place where turfs are dug to burn. Hoved. 438.

GROOM OF THE STOLE.—An officer of the royal household, who has charge of the king's wardrobe.

GROOM PORTER.—Formerly an officer belonging to the royal household.—*Jacob*.

GROSS.—Absolute; entire. A thing in gross exists in its own right, and not as an appendage to another thing. See **IN GROSS**.

GROSS AVERAGE.—GENERAL AVERAGE (*q. v.*)

GROSS NEGLIGENCE.—The want of slight diligence. (Story Bailm. § 17.) The omission of that care which even inattentive and thoughtless men never fail to take of their own property. (20 How. (U. S.) 367.) Carelessness in situations or places where accidents are liable to happen. See **NEGLIGENCE**.

GROSS NEGLIGENCE, (defined). 23 Conn. 437, 443; 4 Bush (Ky.) 509; 59 Me. 430, 437; 45 Mo. 22; 3 Hurlst. & C. 337.

— (what is). 32 Vt. 652.

— (what is not). 45 Mo. 84, 88.

— (distinguished from "fraud"). 3 Metc. (Ky.) 385.

— (distinguished from "wilful negligence"). 11 Bush (Ky.) 382.

— (equivalent to "negligence"). 11 Mees. & W. 113, 115.

— (in fire insurance policy). 73 Ill. 230.

GROSS OR WANTON AND CRUEL NEGLECT, (what is not, as a cause for divorce). 104 Mass. 195.

GROSS SUM, (defined). 16 Wend. (N. Y.) 262.

GROSS WEIGHT.—The whole weight of goods and merchandise, including the dust and dross, and also the chest or bag, &c., upon which tare and tret are allowed.

GROSSE BOIS.—Timber.—*Cowell*.

GROSSMENT ENCEINTE.—Pregnancy in its later stages.

GROSSOME.—A fine paid for a lease. Plowd. 270.

GROTIUS.—Hugo De Groot, commonly called "Grotius," was born at Delft, on the 10th April, 1583, and died in Rostock, the 28th August, 1645. He wrote *Mare Liberum* and *De Jure Belli et Pacis*, two important works on international law; and various smaller works. Holtz. Encycl.

GROUND, (in a statute). 9 Gray (Mass.) 451, 491.

— (synonymous with "land"). 76 Pa. St. 376.

GROUND ANNUAL.—In the Scotch law, a ground rent.

GROUND OF ACTION, (in a statute). 24 Conn. 33, 39.

GROUND RENT.—A periodical payment for the privilege of building on another's land. See **RENT**.

GROUND RENT, (defined). 1 Meriv. 26.

— (is a rent service). 1 Whart. (Pa.) 337.

— (what is sufficient to raise presumption that it has been released). 1 Whart. (Pa.) 229.

GROUND RENT DEED, (defined). 2 Whart. (Pa.) 209.

GROUND RENTS, (in a will). 1 Bro. Ch. 76; Str. 1020.

GROUND WRIT.—By the English Common Law Procedure Act, 1852, c. 121, "It shall not be necessary to issue any writ directed to the sheriff of the county in which the venue is laid, but writs of execution may issue at once into any county, and be directed to and executed by, the sheriff of any county, whether a county palatine or not, without reference to the county in which the venue is laid, and without any suggestion of the issuing of a prior writ into such county." Before this enactment, a *ca. sa.* or *fi. fa.* could not be issued into a county different from that in which the venue in the action was laid, without first issuing a writ called a "ground writ" into the latter county, and then another writ, which was called a "*testatum writ*," into the former. The above enactment abolished this useless process.—*Wharton*.

GROUNDAGE.—A custom or tribute paid for the standing of shipping in port.—*Jacob*.

GROWING CROPS are, in most cases, part of the land, and therefore, if A. conveys or devises land to B., the crops pass with it and belong to B. If, however, the owner dies intestate, the crops go to his administrators, and not to his heir-at-law,

because they are mainly the result of labor incurred at the expense of his personal estate. (Wms. Pers. Prop. 19.) Tenants for limited terms are sometimes entitled to reap crops which have been sown by them, when their estate has determined before the crop is ripe. (See AWAY-GOING CROP; EMBLEMENTS.) Severed crops are personal estate, and, in the case of hay or corn, may be distrained on for rent. (3 Steph. Com. 250.) Growing crops are liable to be taken in execution under a *fi. fa.*, subject to the landlord's right of distress. 3 Steph. Com. 584. See **TIMBER**.

§ 2. **Bills of Sale.**—In England, an assignment or charge of growing crops does not require registration under the Bills of Sale Act (*q. v.*), if by the same instrument any freehold or leasehold interest in the land is conveyed or assigned to the same person. Bills of Sale Act, 1878, § 7.

GROWING DUE, (in an assignment). 4 Rawle (Pa.) 307, 313.

— (not synonymous with "owing," or "due"). 8 T. R. 49.

GROWING POTATOES, (sale of, is not sale of lands or interest therein). 8 Dowl. & Ry. 611; 4 Mees. & W. 343.

GROWTH HALFPENNY.—A rate paid in some places for the tithe of every fat beast, ox, or other unfruitful cattle. Clayt. 92.

GRUARI.—The principal officers of a forest.

GUADIA.—A pledge; a custom.—*Spel. Gloss.; Calv. Lex.*

GUAGE.—The measure of width of a railway, fixed, with some exceptions, at 4 feet 8½ inches in Great Britain and America, and 5 feet 3 inches in Ireland.

GUARANTEE.—He to whom a guaranty is made. See **GUARANTY**.

GUARANTIED DIVIDENDS, (meaning of). 8 R. I. 310, 333; 5 Am. Rep. 575.

GUARANTOR.—He who makes a guaranty.

GUARANTOR, (distinguished from "surety"). 32 Ind. 11.

— (of note, distinguished from "indorser"). 2 Hill (N. Y.) 189.

GUARANTY.—

§ 1. A guarantee, or guaranty, is a collateral promise to answer for the debt,

default or miscarriage of another, as distinguished from an original and direct contract for the promisor's own act. (Chit. Cont. 470; Cf. 29 Car. 2, c. 3, § 4; Sm. Merc. Law 460; 24 Pick. (Mass.) 252.) It is, therefore, of the essence of a guaranty that there should be some one liable as principal; consequently, where one person agrees to become responsible for another, but no valid claim ever arises against the latter, no contract of guaranty exists. Chit. Cont. 470.

§ 2. The person who binds himself by the guaranty is called the guarantor or the surety, the person to whom it is made the guarantee, and the person for whom it is made is called the principal. Thus, if A. agrees to supply goods to B., in consideration of C.'s promise to pay him for them if B. fails to do so, this is a contract of guaranty by C., who is the guarantor or surety, A. being the guarantee and B. the principal.

§ 3. Under the various statutes of frauds, every guaranty must be in writing and signed by the party to be charged, but the consideration need not, as a general rule, be stated.

§ 4. **Continuing.**—A continuing guaranty is one which continues in force until recalled by the guarantor, as opposed to a guaranty applying only to a particular act, sum or transaction; thus, a guaranty "for any goods which A. may supply B. with, to the amount of \$100," is a continuing guaranty, and is, therefore, not discharged by one transaction, *i. e.* by a supply of goods to the amount stated and a payment for them. Chit. Cont. 490; Sm. Merc. Law 470. As to the important distinction between a guaranty for part of a debt and a guaranty for the whole of a debt with a limitation on the amount for which the surety is to be liable, see *Ellis v. Emmanuel*, 1 Ex. D. 157.

§ 5. It is sometimes a question whether a continuing guaranty can be determined by the guarantor or not. In the instance above given (§ 4), there seems to be no doubt that the guarantor could withdraw the guaranty at any time by notifying A. that he would not be liable for any goods supplied to B. *after that date*. Such a guaranty would also probably be deter-

mined *ipso facto* by the guarantor's death. But if the arrangement is of such a nature that the person to whom the guaranty is given cannot put a stop to future transactions, then the guaranty is not determinable by the guarantor, or on his death. *Lloyds v. Harper*, 16 Ch. D. 290.

§ 6. A representation in the nature of a guaranty, is where A. makes a wilfully false representation to B. as to the credit or solvency of C., whereby B. is induced to trust C. (Sm. Merc. Law 477.) It gives B. a right of action for damages against A., if B. trusts C. and thereby loses money.

GUARANTY, (defined). 10 Pet. (U. S.) 432, 493; 3 Kent Com. 121; Fell Mer. Guar. 1; Story Prom. N. § 457; 1 Chit. Gen. Pr. 126.

— (what constitutes). 7 Cranch (U. S.) 89; 1 Hill (N. Y.) 256; 8 Johns. (N. Y.) 29, 39; 15 Wend. (N. Y.) 330.

— (what is not). 13 Mass. 158; 1 Mau. & Sel. 557.

— (consideration for). 8 Dowl. & Ry. 62.

— (equivalent to "promise"). 107 Mass. 449, 452.

— (for the payment of land). 1 Dev. (N. C.) 372.

— (in a letter of credit). 2 Campb. 436.

— (of a bond). 3 Pa. 18.

— (of a promissory note). 7 Mass. 233; Ohio Cond. Rep. 436; 1 Pa. St. 501; 2 Wheel. Am. C. L. 205.

GUARANTY, CONTINUING, (what is) 7 Pet. (U. S.) 114; 2 Hall (N. Y.) 197.

GUARANTY, I, (in an agreement). 1 Campb. 242.

— (in a contract). 27 Conn. 31.

— (in a letter). 4 Har. & J. (Md.) 322; 7 Id. 457.

— (in an order). 2 Gill & J. (Md.) 302.

— (in a will). 2 Russ. 452.

— (indorsed on a promissory note). 7 Conn. 523; 2 Greenl. (Me.) 261; 7 Mass. 479; 12 Id. 14; 8 Pick. (Mass.) 423; 1 Hill (S. C.) 56; 4 Yerg. (Tenn.) 194.

GUARANTY, I HEREBY, (an account). 2 Brod. & B. 211.

GUARANTY, I WILL, (in a contract). 24 Pick. (Mass.) 250.

— (in a letter of credit). 9 Wis. 316.

GUARANTY THE COLLECTION, (equivalent to guaranty that note is collectible by due course of law). 1 Wend. (N. Y.) 457.

GUARDAGE.—A state of wardship.

GUARDIAN.—A guardian is a person having the right and duty of protecting the person, property, or rights of some one who is supposed to be incapable of managing his own affairs; such as an infant or a lunatic. They are of two kinds: Guardians of the person or property, and Guardians *ad litem*. See GUARDIANS OF THE POOR.

§ 1. **Guardians of person or property.**—Guardians of the person or property of infants are of five kinds, namely: By the common law; by statute; by custom; guardians by nature in the modern sense; and by judicial appointment.

§ 2. Guardians by the common law were formerly of five kinds, viz.: Guardian in chivalry; guardian by nature (in the technical sense); guardian in socage; guardian by nurture; and guardian by election. The first two are completely obsolete; the last three practically so. Guardians in chivalry and in socage are sometimes called "guardians by tenure."

§ 3. **Guardian in chivalry.**—Before tenure by knight's service was abolished, one of its incidents was guardianship or wardship in chivalry, "for when such tenant dyeth, and his heire male be within the age of twenty-one yeares, the lord shall have the land holden of him untill the age of the heire of twenty-one yeares. . . . And also, if such heire be not married at the time of the death of his ancestor, then the lord shall have the wardship and marriage of him" (Litt. § 103), i. e. the wardship of the heir's person as well as of the land.

§ 4. While the lord had the wardship he was said to be "guardian in right." If he assigned the wardship of the land or person of the heir, or both, to another person, the grantee was called "guardian in fact," or "guardian in deed." *Id.* § 116.

§ 5. **Guardian by nature.**—But if land held by knight's service descended to an eldest son under age during the lifetime of his father, "in this case the lord shall have the wardship of the land but not of the bodie of the heire because none shall be in ward of his bodie to any lord, living [i. e. during the life of] his father." (*Id.* § 114.) This guardianship of the father was called "guardianship by nature," in the proper sense of the phrase, and it applied only to the custody of an heir apparent. (Co. Litt. 84 b, 88 b, and Hargrave's note (12); 3 Co. 37 b.) In the United States, the father, or in case of his death, the mother of an infant is still called its "guardian by nature." See *infra*, § 11.

§ 6. **Guardian in socage.**—According to the old law, if land or any other tenement held in socage descended to an heir under the age of fourteen, the next of blood to whom the inheritance could not descend had the wardship of the land and of the heir until he attained fourteen, (or, in the case of gavelkind land, fifteen,) when he could enter and oust the guardian and occupy the land himself. (Litt. § 123; Co. Litt. 87 b; 2 Steph. Com. 310.) If the next of blood was himself an infant in wardship, his guardian became guardian of the new heir, and was then called guardian *per cause de gard*. (Co. Litt. 88 b, n. (3).) During the wardship the guardian could grant leases for a term ceasing on the ward attaining fourteen. (1 Bl. Com. 461, n. (5).) This was called a "guardianship in socage," and,

though in theory it may still exist, it is in practice obsolete. (See 4 Byth. Conv. 226.) Where a child has a testamentary guardian (*infra*, § 9,) the guardian in socage has no authority.

§ 7. **Guardian by nurture**—Guardianship by nurture, in England, only occurs where the infant is without any other guardian, and none can have it except the father or mother. It extends no further than the custody and government of the infant's person, and determines at fourteen in the case both of males and females. (Hargrave's note (13) to Co. Litt. 88 b. See another sense of the term given in Shepp. Abr. v. *Guard.*) This sort of guardianship is unknown in the United States, being merged into guardianship by nature.

§ 8. **Guardian by election.**—Guardianship by election is where an infant himself chooses a guardian, which he can only do when he would otherwise be wholly without one. This may happen (in England) either before fourteen, when the infant has no guardian by tenure and the father is dead without having appointed a guardian, and there is no mother, or (both in England and America, subject in the latter country to the approval of a court of equity,) after fourteen when the infant has been in wardship by socage, which terminates on his attaining fourteen. (Co. Litt. 87 b; Hargrave's note (16) to 88 b; 1 Bl. Com. 862, *n.* (12), where it is said that the office of a guardian by election seems not to extend beyond giving the consent to marriage required by the Marriage Act.) As to guardians by election in English probate practice, see *infra*, § 13.

§ 9. **Guardians by statute, or testamentary guardians.**—The Stat. 12 Car. 2, c. 24, enacts that any father may, by deed or will, from time to time dispose of the custody and tuition of his children during their minority, or any less time, to any person or persons other than popish recusants, and that such disposition shall be good against all persons claiming the custody of any such child as guardian in socage, or otherwise, and that the guardian so appointed shall take into his custody and management the property of the infant for his benefit. A guardian appointed in England under this statute, or in the United States under similar State statutes founded thereon, is called a guardian by statute, or testamentary guardian. See 2 White & T. Lead. Cas. 613; notes to Eyre v. Countess of Salisbury, 2 P. Wms. 103;

Snell Eq. 322; Wats. Comp. Eq. 294. The Stat. 4 and 5 Ph. & M. c. 8, was passed to prevent the taking away or marrying of any damsel under the age of sixteen years from the custody of her father or mother, or of any person to whom the father by deed or will had assigned her custody. From these provisions, it was held that the act had impliedly created a power for the father to assign a guardian to his daughters, and that during his life, he, or after his death and in the absence of an appointment by him, the mother, was their guardian by nature. Ratcliff's Case, 3 Co. 37; Co. Litt. 88 b, and Hargrave's note (14). The 4 and 5 Ph. & M. was repealed by 9 Geo. IV. c. 31.

§ 10. **Guardian by custom.**—Guardianship by custom is said to occur in the city of London and various other cities and boroughs in England, where the mayor and aldermen have the guardianship of orphans; (this seems to have originally been in respect of burgage tenements held by the orphans; see *Elt. Copyh.* 158;) in the county of Kent, when a tenant in gavelkind dies leaving his heir or heirs under fifteen; and in certain manors, where the lord has the power of naming or is himself the guardian of an infant copyholder. (See 1 Bl. Com. 462 and notes; Co. Litt. 88 b, and Hargrave's note (16), and the authorities cited in both works; *Elt. Copyh.* 157; *Elt. Tenures of Kent* 79.) But these kinds of guardianship are rare.

§ 11. **Guardianship by nature**, in its modern sense, is a term of somewhat uncertain scope, but the meaning intended to be conveyed by it seems to be that where a child has some property or rights in respect of which it requires to be represented, then its father, if it has one, is its guardian by nature, and if it has no father or other guardian, then its mother is its guardian by nature. So a mother is called the natural guardian of her illegitimate children, apparently because the full legal relation of parent and child is not recognized in the case of illegitimate children. (1 Bl. Com. 461 and note; Wats. Comp. Eq.; Co. Litt. 88 b, *n.* (12); *Reg. v. Howes*, 30 L. J. M. C. 47, where it was decided that the guardianship (for some purposes) lasts until the age of sixteen years; *Mallinson v. M.*, L. R. 1 P. & D. 221; *In re Marquis of Salisbury*, 2 Ch. D. 29, where it was held that the word "guardian" in § 1 of the act 36 and 37 Vict. c. 50, includes guardian by nature in the sense of the father, so as to enable him to bind his infant son by join

ing in a conveyance on his behalf.) Some writers, however, use the term "guardianship by nature" to express the ordinary relation of parent and child, but this is unnecessary and confusing.

§ 12. **Guardian by judicial appointment.**—In America, courts of equitable jurisdiction, and in England the Chancery Division of the High Court, in the exercise of their general jurisdiction over infants, will appoint a suitable guardian to an infant, where there is no testamentary guardian or guardian in socage, or where the father or guardian is unfit to have charge of the child. Such a guardian can, in England, take no steps as to the person or property of the infant without the direction of the court. (Wats. Comp. Eq. 295; 2 White & T. Lead. Cas. 613; Snell Eq. 322; Hargrave's note (16) to Co. Litt. 88b; 1 Bl. Com. 463 and note. As to guardians appointed by the old ecclesiastical courts, see Hargrave's note (16) to Co. Litt. 88b.) But in America, he need not, as a rule, apply to the court except when he desires to sell or mortgage the ward's land, or invest the ward's money in real estate.

§ 13. **Guardian of minor administrator.**—In probate practice, where a person who would otherwise be entitled to a grant of probate or administration is under age and has no testamentary or judicial guardian, a curator or guardian is appointed for the purpose of taking out letters of administration for his use and benefit during his minority. In England, if he is above the age of seven, but under twenty-one, he is styled a minor, and has the privilege of electing any one of his next of kin to be his guardian, which he does by signing and filing an instrument to that effect; if he is under seven, he is styled an infant, and is considered incompetent to elect a guardian; one of his next of kin is therefore appointed guardian for him by the court. Coote Prob. Pr. 130. See GRANT, § 8.

GUARDIAN, (defined). Reeve Dom. Rel. 311.
 — (rights of father as). 7 Cow. (N. Y.) 36; 15 Wend. (N. Y.) 631; 19 Id. 16.
 — (mother, when entitled to act as). 33 Conn. 321, 327; Coxe (N. J.) 397.
 — (settlement of the accounts of). 4 Port. (Ala.) 390.

GUARDIAN AD LITEM.—

§ 1. A guardian *ad litem* is a person appointed by a court to prosecute or defend an action or other proceeding on behalf of an infant, or lunatic, or idiot, who is plaintiff, defendant, or respondent to a proceeding in the court. (Dan. Ch. Pr. 146, 158; Smith Ac. 371; Pope Lun. 308; Co. Litt. 135b. It is said that the crown may by letters-patent appoint a guardian to prosecute or defend for an infant in suits generally. Co. Litt. 88b, n. (16.)) If no such guardian is appointed on the application of the infant or lunatic, when a defendant, the plaintiff may apply for the appointment of a guardian. Dan. Ch. Pr. 147, 160.

§ 2. In English divorce practice, an infant elects his guardian *ad litem*, for the purpose of proceeding on his behalf as petitioner, respondent, or intervener. (Browne Div. 23; Divorce Rules, 1866, 105; see, also, the meaning given to "guardian" in the Summary Jurisdiction Act, 1879, § 49.) In America, as a general rule, guardians *ad litem* are appointed in divorce suits in the same manner as in ordinary actions. See NEXT FRIEND.

GUARDIAN AD LITEM, (must be a real person). 2 Cow. (N. Y.) 430.

GUARDIAN BY APPOINTMENT OF COURT.—See GUARDIAN, § 12.

GUARDIAN BY NATURE.—See GUARDIAN, §§ 5, 11.

GUARDIAN BY NATURE, (powers of). 2 Wend. (N. Y.) 153; Cro. Eliz. 734.

GUARDIAN BY STATUTE.—See GUARDIAN, § 9.

GUARDIAN DE L'EGLISE.—A churchwarden.—Cowell.

GUARDIAN DE L'ESTEMARY.—The warden of the stannaries or mines in Cornwall, &c.

GUARDIAN FOR NURTURE.—See GUARDIAN, § 7.

GUARDIAN IN SOCAGE.—See GUARDIAN, § 6.

GUARDIAN OF ANY HOSPITAL, (in a statute). 8 Ch. D. 709, 724.

GUARDIAN OF THE PEACE.—A warden or conservator of the peace.

GUARDIAN OF THE SPIRITUALITIES.—An officer of a diocese to whom presentations may be made, and by whom institutions, &c., may be given during the absence of a bishop from England, or during the vacancy of the see. Usually the archbishop is the guardian. *See* TEMPORALITIES.

GUARDIAN OF THE TEMPORALITIES.—The person to whose custody a vacant see or abbey was committed by the crown.

GUARDIAN, or WARDEN OF THE CINQUE PORTS.—A magistrate who has the jurisdiction of the ports or havens, which are called the "cinque ports" (*q. v.*) This office was first created in England, in imitation of the Roman policy, to strengthen the sea-coasts against enemies, &c. *Camd. Br.* 238.

GUARDIANS, (at common law). 4 *Com. Dig.* 504.

— (at common law and by statute). 37 *Cal.* 660.

— (at common law, by statute, and by custom). *Co. Litt.* 88 b.

GUARDIANS OF THE POOR.—

§ 1. By Stat. 22 Geo. III. c. 83, explained by Stat. 33 Geo. III. c. 35, any parish is authorized, by the vote of two-thirds in number and value of its owners or occupiers, to nominate three persons, from whom two justices may appoint one (or in some cases two) to act as guardian of the poor for the parish. Such guardians practically act in lieu of overseers in all matters relative to the relief and management of the poor, except the making and collection of rates. *See* OVERSEER.

§ 2. By Stat. 4 and 5 Will. IV. c. 76, where any parishes are formed into a union with the concurrence of the poor law commissioners (now the local government board), its affairs are administered by a board of guardians elected by the ratepayers and owners of property in the respective parishes. All justices of the peace acting for the district are *ex officio* guardians. And where the local government board direct that the poor law matters of any single parish shall be administered by a board of guardians, they are elected and constituted in the same manner. *See* POOR.

GUARDIANS OF THE POOR, (powers and duties of). 3 *Steph. Com.* 47.

GUARDIANSHIP.—The status of one over whose person or estate, or both, a guardian has been appointed. Also the power or authority of a guardian over his ward; the relation subsisting between guardian and ward.

GUARDIANUS.—A guardian, warden or keeper.—*Spel. Gloss.*

GUASTALD.—One who had the custody of the royal mansions.

GUBERNATOR.—A pilot or steersman of a ship.

GUERRA—GUERRE.—War.—*Spel. Gloss. voc.* Guarra; *Kelham.*

GUERRILLA PARTY.—Self-constituted sets of armed men, in times of war, who form no integrant part of the organized army, do not stand on the regular pay-roll of the army, or are not paid at all, take up arms and lay them down at intervals, and carry on petty war, chiefly by raids, extortion, destruction and massacre. *Lieber, Guer. Part.* 18. *See* Hall. *Int. Law* 386; *Wools. Int. Law* 299.—*Bowyer.*

GUEST.—A lodger, or stranger in an inn.—*Jacob.* A traveller or wayfarer who puts up at an inn. (8 *Co.* 32.) It seems that a permanent boarder at an inn is not a guest, but see the cases referred to below.

GUEST, (defined). 2 *Dall. (U. S.)* 92, 93; 35 *Com.* 183, 185.

— (who is). 33 *Cal.* 557; 7 *Cush. (Mass.)* 417, 423; 9 *Pick. (Mass.)* 280; 12 *Mich.* 52; 55 *Barb. (N. Y.)* 188; 26 *Vt.* 316; *Story Bailm.* § 477.

— (who is not). 68 *Me.* 489; 36 *Barb. (N. Y.)* 452.

— (distinguished from "boarder"). 25 *Iowa* 553.

— (liability of inn-keeper for property of). 5 *Barb. (N. Y.)* 560; 8 *Co.* 32; *Cro. Jac.* 188, 224.

— (lien of inn-keeper on goods of). 24 *How. (N. Y.) Pr.* 62.

GUEST-TAKER.—An agistor; one who took cattle in to feed in the royal forests.—*Cowell.*

GUIDAGE.—A reward for safe conduct through a strange land or unknown country.—*Cowell.*

GUIDON DE LA MER.—A treatise on maritime law, written in Rouen in 1671.

GUILD.—A company, fraternity, or corporation, associated for some commercial purpose.

GUILDHALL.—The chief hall of a city or borough-town, for holding courts, and for the meeting of the corporation in order to make laws for the regulation of the city or town, and to administer summary justice.—*Wharton.*

GUILDRENTS.—*See* GILDRENT; GULT-WIT.

GUILT.—In its most general sense, "guilt" is imputability. In its narrower and more usual sense, it is the imputability of some offence to an accused person as its perpetrator. The person alleging such imputability has the *onus probandi* thrown

upon him; the presumption of innocence holding good until it is rebutted.

GUILTY.—Having committed a crime or tort; the word used by a prisoner in pleading to an indictment when he confesses the crime of which he is charged, and by the jury in convicting. *See* PLEA.

GUILTY CONNECTION, (means "carnal connection"). 7 Ired. (N. C.) L. 321, 324.

GUILTY KNOWLEDGE, (as an ingredient of an offence). 37 Mich. 4.

GUILTY OF CONVEYING AWAY, (in a statute). 3 Halst. (N. J.) 324.

GUINEA.—A coin formerly issued by the English mint, but all these coins were called in in the time of Wm. IV. The word now means only the sum of £1. 1s., in which denomination the fees of counsel are always given.

GULE OF AUGUST.—The first day of that month.—*F. N. B.* 62; *Plowd.* 316.

GULES.—The heraldic name of the color usually called red. The word is derived from the Arabic word *gule*, a rose, and was probably introduced by the Crusaders. Gules is denoted in engravings by numerous perpendicular lines. Heralds who blazoned by planets and jewels called it "Mars," and "ruby."—*Wharton.*

GULTWIT, or GUILTWIT.—Amends for a trespass.

GURGITES.—Wears.—*Jacob.*

GUTI, or GOTTI.—Goths, Jutæ or Getæ, who left Germany and came to inhabit England at an early period. *Leg. Edw. Conf. c. 35.*

GWABR MERCHED.—A payment or fine made to the lords of some manors, upon their tenants' daughters marrying or committing incontinency.—*Jacob. See* MARCHET.

GWALSTOW.—A place of execution.—*Jacob.*

GWAYF.—That which has been stolen and afterwards dropped in the highway for fear of a discovery.—*Cowell. See* WAIF.

GYLPUT.—The name of a court which was held every three weeks in the liberty or hundred of Pathbew in Warwick.—*Jacob.*

GYLTWITE.—*See* GULTWIT.

GYNARCY, or GYNÆOCRACY.—A government by a woman; a state in which women are legally capable of the supreme command, *e. g.* in Great Britain and Spain.

GYROVAGI.—Wandering monks.

GYVES.—Fetters or shackles for the legs.

H.

HABEAS CORPORA JURATORUM.—That you have the bodies of the jurors. A process which issued out of the English Court of Common Pleas, commanding the sheriff to summon a jury. The practice was similar to the *distringas* from the Queen's Bench and Exchequer for the same purpose. It was abolished by C. L. P. Act, 1852, § 104.

HABEAS CORPUS.—

§ 1. A writ so called because it is directed to a person who detains another in custody and commands him to produce or "have the body" of that person before the court, or the judge who grants the writ, for a specified purpose.

§ 2. **Ad subjiciendum.**—The most important species of *habeas corpus* is what is called, by way of distinction, the *habeas corpus ad subjiciendum*, from its commanding the person to whom it is directed to produce the body of the person detained, with the day and cause of his caption and

detention, *ad faciendum, subjiciendum et recipiendum*, "to do, submit to and receive" whatsoever the court shall direct. This writ was formerly much used, in England, for testing the legality of imprisonment for political reasons, especially during the reigns of the Stuarts; and the evasions and abuses practiced by the judges (at the instance of the crown) to detain state prisoners in prison, gave birth to the *Habeas Corpus* Act, 31 Car. II. c. 2. This act in effect made the granting of a *habeas corpus* compulsory in the case of a person imprisoned without a legal cause being assigned in the warrant of committal, and provided for the speedy trial of persons imprisoned for treason or felony. The Stat. 56 Geo. III. c. 100, passed to render the writ more effectual in cases not within the Statute of Charles II., provided for the issue and return of a *habeas corpus* in

vacation as well as in term, and for examining into the truth of the facts stated in any return to a *habeas corpus*.*

In American practice, this form of the writ (called generally *habeas corpus*, without the additional Latin words,) is extensively resorted to, both in the federal and State courts, in cases of unlawful restraint of liberty, and the constitution of the United States provides, that "The privilege of the writ of *habeas corpus* shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require it." (Art. I. sec. 9 § 2.) Similar provisions will be found in the several State constitutions. The writ is one of right, and generally issues as a matter of course, but, in the federal courts, it may be refused, in a case where the judge applied to can see, on the face of the application, that the ground relied upon is insufficient to authorize the discharge of the party. Section 753 of the U. S. Rev. Stat. provides as follows: "The writ of *habeas corpus* shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the constitution, or of a law or treaty of the United States; or, being a subject or citizen of a foreign State, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign State, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify." The other provisions respecting the power to issue the writ conferred by existing law on the federal courts will be found in sections 751 and 752.

The power to issue the writ, and matters of practice on the application and hearing, are likewise regulated by statute in the several States, and while in matters of detail the practice in the courts of any one State differs somewhat from that in the federal tribunals, and, indeed, from that of the courts of any other State, still the general principles underlying the subject of the employment of the writ are the same in all the jurisdictions, and the statute and case law of any particular State should be resorted to for a knowledge of the distinctive features of the local practice.

§ 3. The following kinds of *habeas corpus* have become practically obsolete in England since the abolition of arrest on mesne process and of imprisonment for debt: (1) *Habeas corpus ad respondendum*, to bring up a prisoner confined by the process of an inferior court, to charge him with a fresh action in the court above; (2) *ad satisfaciendum*, used with a similar object when judgment had been given in the inferior court against the prisoner; (3) *habeas corpus cum causa* (or *ad faciendum et recipiendum*), to remove an action in which the defendant had been arrested, from an inferior court to the court above. 3 Steph. Com. 643, n. (c); Chit. Gen. Pr. 1320 *et seq.*

§ 4. The writ of *habeas corpus ad prosequendum, testificandum, deliberandum, &c.*, was formerly used when a prisoner had to be brought up to bear testimony in any court, or to be tried in the proper jurisdiction; the provisions of the acts 16 and 17 Vict. c. 30, § 9; 19 and 20 Vict. c. 103, § 31, and 30 and 31 Vict. c. 35, § 10, have superseded this writ. *Id.* See the titles below.

HABEAS CORPUS, (nature and powers of writ of). 3 Pet. (U. S.) 193.

— (when it lies to remove a civil action into a higher court). 4 Halst. (N. J.) 101.

HABEAS CORPUS ACT.—See HABEAS CORPUS, § 2.

HABEAS CORPUS AD DELIBERANDUM ET RECIPIENDUM.—A writ issued to remove, for trial, a person confined in one county to the county or place where the alleged offence was committed. Now obsolete in England and in most, if not all, of the States.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM.—A writ issued to remove an action in which the defend-

* The Stat. 25 and 26 Vict. c. 20, enacts that no *habeas corpus* shall issue out of England into any colony or foreign dominion of the crown where there is a court having authority to issue the writ. Subject to this limitation, the writ of *habeas corpus* runs into all parts of the dominions of the crown. (3 Steph. Com. 642; 3 Hallam Const. Hist. 12.) At the present day the writ is

only used to determine questions of law, *e. g.* as to the legality of an imprisonment (as where a person is arrested under the Extradition Acts) (Reg. v. Wilson, 3 Q. B. D. 42), or as to the person entitled to the custody of an infant, (*In re Goldsworthy*, 2 Q. B. D. 75; 2 Steph. Com. 313,) or the like. The writ of *habeas corpus ad subjiendum*, is a prerogative writ. See WRIT.

ant had been arrested, from an inferior court to some superior court having jurisdiction over the matter. This writ is commonly called *habeas corpus cum causa*, because it commands the judges of the inferior court to return the day and cause of the caption and detainer of the prisoner. Practically obsolete both in England and America.

HABEAS CORPUS AD PROSEQUENDUM.—A writ issued to remove a prisoner in order to prosecute him in the proper jurisdiction. Practically obsolete.

HABEAS CORPUS AD RESPONDENDUM.—A writ issued (1) in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter. (2) To bring up a person in confinement to answer a criminal charge. Practically obsolete.

HABEAS CORPUS AD SATISFACIENDUM.—A writ issued to bring a prisoner from the prison of one jurisdiction into that of another in order to charge him in execution upon the judgment of the latter. Practically obsolete.

HABEAS CORPUS AD SUBJICIENDUM.—*See* HABEAS CORPUS, § 2.

HABEAS CORPUS AD SUBJICIENDUM, (when granted). 9 Ad. & E. 731.

HABEAS CORPUS AD TESTIFICANDUM.—A writ issued to bring up a prisoner detained in any jail or prison, to give evidence before some court of competent jurisdiction. This writ is still used in New York and a few other States where convicts in confinement are competent witnesses, to bring such convict witnesses, as well as other prisoners, into court to testify.

HABEAS CORPUS CUM CAUSA.—*See* HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM.

Habemus optimum testem confitem reum (1 Phil. Ev. 397): We have the best witness—a confessing defendant. "What is taken *pro confesso* is taken as indubitable truth. The plea of guilty by the party accused, shuts out all further inquiry. *Habemus confitem reum* is demonstration, unless indirect motives can be assigned to it." 2 Hagg. 315.

HABENDUM.—The *habendum*, in a deed of conveyance, is the clause indicating the estate to be taken by the grantee. 1 Davids. Conv. 99; Shep. Touch. 74. *See* DEED; TO HAVE AND TO HOLD.

HABENDUM, (use and effects of). 6 Conn. 289; 3 Wend. (N. Y.) 524; 12 Id. 91; 1 Serg.

& R. (Pa.) 375; 4 Wheel. Am. C. L. 243, 247 5 Barn. & C. 709; 2 Co. 55a; 8 Dowl. & Ry 502; Dyer 124b; 3 East 115; 7 Petersd. Abr 676.

HABENTES HOMINES.—Rich men.—*Du Cange*.

HABENTIA.—Riches. Mon. Ang. t. 1, 100.

HABERE FACIAS POSSESSIONEM.—This is the name for the writ by which the claimant in an action of ejectment (if successful) obtains possession of the land in question. (Chit. Gen. Pr. 1045.) The name is still sometimes applied to the analogous writ of possession now in general use, which is in the same terms. Smith Ac. 175. *See* WRIT OF POSSESSION.

HABERE FACIAS POSSESSIONEM, (use of). 7 Halst. (N. J.) 275.

HABERE FACIAS SEISINAM.—A writ addressed to the sheriff to give seisin of a freehold estate recovered by *ejectione firmæ* or other action.—*O. N. B.* 154.

HABERE FACIAS VISUM.—A writ that lay in divers cases in real actions, as in formedon, &c., where a view was required to be taken of the lands in controversy. *See* FORMEDON.

HABERE LICERE.—In the Roman law, this phrase denoted the permitting a purchaser of property to have the possession and enjoyment thereof; and it was a duty on the part of the vendor, for breach of which an action *ex empto* would lie. It corresponds to the "quiet enjoyment" of English law.

HABERGEON.—A diminutive of hauberk, a short coat of mail without sleeves.—*Blount*.

HABERJECTS.—A cloth of a mixed color.—*Magna Charta* c. 26.

HABILIS.—Able; fit; competent; suitable—as applied to persons—and merchantable, or sound, as applied to things.—*Burrill*.

HABIT AND REPUTE.—By the law of Scotland, and by that of New York and a few other States, marriage may be established by habit and repute where the parties cohabit and are at the same time held and reputed as man and wife. *See* Bell Dict.

HABITABLE REPAIR, (in a covenant). 2 Moo. & R. 186.

HABITANCY, (defined). 17 Pick. (Mass.) 231, 234.

HABITATIO.—The nature of this personal servitude is not obvious. Some jurists confound it with the right to use a house; but Justinian

declares it to be quite distinct, both from the *jus utendi* and the *jus fruendi*. For whilst the *jus utendi* is one and entire, the *habitatio* is a series of rights arising from day to day, so that in bequeathing it you make a separate bequest, in fact, for each day; hence, also, it was not extinguished by non-user. Justinian added the further distinction, that it might be let. (Cum. C. L. 95; Sand. Just. (5 edit.) 131.)—*Wharton*.

HABITATION, (defined). 10 Gratt. (Va.) 64.

HABITUAL CRIMINAL.—See POLICE SUPERVISION.

HABITUAL DRUNKARD.—See DRUNKENNESS, § 3.

HABITUAL DRUNKARD, (defined). 5 Gray (Mass.) 85; 35 Mich. 210.

—— (not synonymous with "person of unsound mind"). 50 Barb. (N. Y.) 645, 671.

—— (effect of inquisition). 8 N. Y. 388.

—— (rights and duties of committee). 5 Paige (N. Y.) 120.

HABITUAL INTEMPERANCE, (defined). 53 Iowa 511, 512.

HABLE.—A seaport town. Stat. 27 Hen. VI. c. 3.

HACIENDA.—In the Spanish law, the whole mass of the property of a State or government; also the administration thereof.—*Bowyer*.

HACKNEY COACH, (defined). 33 How. (N. Y.) Pr. 481, 486.

—— (keeping without a license). 2 Ld. Raym. 1215 n.

HADBOTE.—A recompense for an affront or violence offered to a priest.—*Cowell*.

HADERUNGA.—Respect of persons; partiality.—*Cowell*.

HADGONEL.—A tax or mulct.—*Jacob*.

HÆREDA.—A court similar to a court-leet (q. v.)

HÆREDE ABDUCTO.—An ancient writ that lay for the lord, who having by right the wardship of his tenant under age, could not obtain his person, the same being carried away by another person.—*O. N. B.* 93.

HÆREDE DELIBERANDO ALTERI QUI HABET CUSTODIUM TERRÆ.—See DE HÆREDE DELIBERANDO, &c.

HÆREDE RAPTO ET ABDUCTO.—See DE HÆREDE RAPTO, &c.

HÆREDES.—In the Roman law, the *hæredes* were the successors, by strict law, to a deceased person, being called *hæredes legitimi* where the deceased died intestate, and *hæredes scripti* (i. e. devisees) where he died leaving a will. They corresponded to the *bonorum posses-*

sors of Praetorian law. They were of three principal varieties, viz.: (1) *Necessarii*, when obliged to accept the inheritance whether they liked to do so or not, e. g. slaves; (2) *sui et necessarii*, when they were obliged by strict law to accept, but were permitted by equity to decline the inheritance, e. g. children; and (3) *extranei*, when they were strangers in blood altogether, and were free to accept or to decline the inheritance according to their own good pleasure. See HÆREDITAS; HEIR.

HÆREDES EXTRANEI.—See HÆREDES.

HÆREDES NECESSarii.—See HÆREDES.

HÆREDES PROXIMI.—Heirs begotten; children.

HÆREDES REMOTIORES.—Heirs not begotten, as grandchildren, great-grandchildren, &c.; descending in a direct line *in infinitum*.

HÆREDES SUI ET NECESSarii.—See HÆREDES.

HÆREDIPETA.—The next heir to lands.

HÆREDITAS.—In the Roman law, the *hæreditas* was a universal succession by law to any deceased person, whether such person had died testate or intestate, and whether in trust (*ex fideicommisso*) for another or not. The like succession according to Praetorian law was *bonorum possessio*. The *hæreditas* was called *jacens*, until the *hæres* took it up, i. e. made his *aditio hæreditatis*; and such *hæres*, if a *suus hæres*, had the right to abstain (*potestas abstinendi*), and if an *extraneus hæres* had the right to consider whether he would accept or decline (*potestas deliberandi*), the reason for this precaution being, that (prior to Justinian's enactment to the contrary) a *hæres* after his *aditio* was liable to the full extent of the debts of the deceased person, and could have no relief therefrom, except in the case of a *damnum emergens* or *damnosa hæreditas*, i. e. an *hæreditas* which disclosed (after the *aditio*) some enormous unsuspected liability.—*Brown*.

HÆREDITAS, (defined). Hob. 238.

Hæreditas, alia corporalis, alia incorporealis; corporalis est, quæ tangi potest et videri; incorporealis quæ tangi non potest nec videri (Co. Litt. 9): An inheritance is either corporeal or incorporeal. Corporeal, is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.

HÆREDITAS DAMNOSA.—See DAMNOSA HÆREDITAS; also, HÆREDITAS.

Hæreditas est successio in universum jus quod defunctus habuerat (Co. Litt. 237): Inheritance is the succession to every right which the deceased had.

HÆREDITAS JACENS.—An estate in Scotland is said to be *in hæreditate jacente* when,

after the ancestor's death, no title to it has been made up in the person of his heir.—*Bell Dict.* See HÆREDITAS.

HÆREDITAS LUCTUOSA.—A mournful inheritance, *e. g.* an inheritance coming to a parent from a child.

Hæreditas nunquam ascendit: Inheritance never ascends. This rule was exploded by 3 and 4 Will. IV. c. 106, § 6, by which, on failure of issue of the purchaser, the inheritance goes to the nearest lineal ancestor. Bracton and Lord Coke compared the descent of an inheritance to that of a falling body, which never went upwards in its course. "*Descendit jus quasi ponderosum quid, cadens deorsum rectâ lineâ: et nunquam reascendit ed vid quâ descendit.*" See DESCENT, § 2.

Hæreditas, n'est pas tant solement entendue lou home ad terres ou tenements per discent d'enharitage, mes auxi chescun fee-simple ou tail que home ad per son purchase puit estre dit enheritance, pur ceo que ses heirs luy purront enheriter (Co. Litt. 26): Inheritance does not only comprehend all the lands and tenements which a man has by descent from his ancestors, but also every fee-simple or fee-tail which he has by purchase is called "inheritance," because his heir can inherit it from him.

HÆRES.—An heir. This is the common law meaning of the word. The Roman law signification was more closely allied to the "executor" of the English law, than the word "heir." See Co. Litt. 7 b.

HÆRES ASTRARIUS.—See ASTARIUS.

HÆRES DE FACTO.—(1) An heir whose title originated in the wrongful act, such as the disseisin of his ancestor. (Bract. 172.) (2) An heir in fact, as distinguished from an heir *de jure*, or by law.

Hæres est alter ipse, et filius est pars patris (3 Co. 12 b): An heir is another self, and a son is part of the father.

Hæres est aut jure proprietatis aut jure representationes (3 Co. 40): An heir is such by right either of property or of representation.

Hæres est eadem persona cum antecessore (Co. Litt. 22): An heir is the same person with his ancestor.

Hæres est nomen collectivum (1 Ventr. 215): Heir is a collective name.

Hæres est nomen juris, filius est nomen naturæ (Bac. Max. 11): "Heir" is a name of right, "son" is the name of nature.

Hæres est pars antecessoris (*Ib.*): An heir is a part of the ancestor.

HÆRES EX ASSE.—An heir to the *as* (*q. v.*) or whole estate; a sole heir.

HÆRES EXTRANEUS.—A strange or foreign heir. See HÆREDES.

HÆRES FACTUS.—An heir appointed; a devisee.

HÆRES FIDEICOMMISSARIUS.—The person for whose benefit an estate was given to another (termed *hæres fiduciarius* (*q. v.*)), by will; the *cestui que trust*. See FIDEICOMMISSUM.

HÆRES FIDUCIARIUS.—A fiduciary heir, or heir in trust; a person constituted heir by will, in trust for the benefit of another, called the *fideicommissarius*.

Hæres hæredis mei est meus hæres: The heir of my heir is my heir.

HÆRES LEGITIMUS.—A lawful heir.

Hæres legitimus est quem nuptiæ demonstrant (Co. Litt. 7 b): He is the lawful heir whom wedlock declares.

Hæres minor uno et viginti annis non respondebit, nisi in casu dotis (Moo. 348): An heir under twenty-one years of age is not answerable, except in the matter of dower.

HÆRES NATUS.—An heir born; an heir by descent.

HÆRES NECESSARIUS.—A necessary heir. A slave made an heir was so called, because, on the death of the testator, whether he would or not, he became instantly free and a necessary heir. See HÆREDES.

Hæres non tenetur in Anglia ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus præterquam debita regis tantum (Co. Litt. 386): In England, the heir is not bound to pay his ancestor's debts, unless he be bound to it by the ancestor, except debts due to the king. But now, by 3 and 4 Will. IV. c. 104, he is liable.

HÆRES RECTUS.—A right heir.

HÆRES SUUS.—A proper heir; literally, one's own heir; the children and grandchildren of a deceased person. See HÆREDES.

HÆRETICO COMBURENDO.—See DE HÆRETICO COMBURENDO.

HAFNE.—A haven or port.—*Cowell.*

HAFNE COURTS.—Haven courts; courts anciently held in certain ports in England.—*Spel. Gloss.*

HAGA.—A house in a city or borough.—*Scott.*

HAGIA.—A hedge. Mon. Ang. tom. 2, p. 273.

HAGNE.—A little hand-gun. Stat. 33 Hen. VIII. c. 6.

HAGNEBUT.—A hand-gun of a larger description than the hagne. Stats. 2 and 3 Edw. VI. c. 14; 4 and 5 P. and M. c. 2.

HAIA.—A park enclosed.—*Cowell*.

HAIEBOTE.—A liberty to take thorns, &c., to make or repair hedges.—*Blount*. See **ESTOVERS**.

HAILWORKFOLK (*i. e.* holyworkfolk).—Those who formerly held lands by the service of defending or repairing a church or monument.

HAIMSUCKEN.—See **HAMESOKEN**.

HAIR OF ANIMALS, (under the tariff acts). 13 Blatchf. (U. S.) 251.

HAKETON.—A military coat of defence.

HALE.—Sir Matthew Hale was born at Alderley, in 1609; became serjeant-at-law, a justice of the Common Pleas in 1654, chief baron of the Exchequer in 1660, lord chief justice in 1671, and died in 1676. He wrote a History of the Common Law, an Analysis of the Law, a Treatise on Pleas of the Crown, all of which are works of authority, and some minor works. Foss. Biog. Jur.

HALF, (in deed conveying "the south half of lot one," &c.) 32 Mich. 267.

HALF A MILE, (in a covenant). 9 Barn. & C. 774.

HALF-BLOOD.—One not born of the same father *and* mother, but having the same father *or* mother. See **BLOOD**, § 2.

HALF-BLOOD, (in statute of wills). 79 Ill. 164.

— (included under "of the blood" in a statute). 2 Pet. (U. S.) 87.

HALF-BROTHER.—A brother by the father or mother's side only.

HALF-CENT.—A copper coin formerly in use in the United States of the value of five mills, or one two-hundredth part of a dollar. It was abolished in 1857.

HALF-DEFENCE.—The technical name for the abbreviated form of the commencement of a defendant's plea in an action at law.

HALF-DIME.—A silver (now nickel) coin of the United States of the value of five cents.

HALF-DOLLAR.—A silver coin of the United States of the value of fifty cents, or one-half the value of a dollar.

HALF-EAGLE.—A gold coin of the United States of half the value of an eagle (*q. v.*)

HALF-ENDEAL.—A moiety, or half of a thing.

HALF-MARK.—A noble, or six shillings and eight pence in English money.

HALF OF MY ESTATE, (in a will). 3 Mod. 46.
HALF PAY, (in a statute). 1 Yeates (Pa.) 262, 273.

HALF-PROOF.—A civil law term for proof, which, while admissible and entitled to some credit, is not sufficient to found a decree or sentence upon. See 3 Bl. Com. 370.

HALF-SEAL.—That which was formerly used in the English Chancery for sealing of commissions to delegates, upon any appeal to the Court of Delegates, either in ecclesiastical or marine causes.

HALF-TONGUE.—A jury *de medietate linguæ*, impaneled to try foreigners. See **JURY**.

HALF-YEAR.—One hundred and eighty-two days, and not six lunar months. Cro. Jac. 166.

HALF-YEAR, (consists of one hundred and eighty-two days). Co. Litt. 135 b; Dyer 345 a.

HALF-YEARLY, (in a bond). Cro. Jac. 25.
— (money payable, when due). 4 East 438.

HALI-GEMOTE.—See **HALLMOTE**.

HALIMASS.—The feast of All Saints, on the 1st of November. One of the cross quarters of the year was computed from Halimass to Candlemass.—*Wharton*.

HALKE.—A hole.—*Jacob*.

HALL.—A public building used as a meeting place either of corporations, courts, or other public assemblies; as, the city hall, or town hall. In old English law, a chief mansion or habitation.

HALL PURPOSES, (premises occupied for). 102 Mass. 204.

HALLAGE.—Tolls paid for goods or merchandise vended in a hall. 6 Co. 62.

HALLMOTE, or **HALLIMOTE.**—A court among the Saxons answering to the Eng-

lish court-baron; also, the court held by each of the city companies in London.—*Cowell*.

HALLUCINATION.—In medical jurisprudence, a kind of mania by which an idea reproduced by the memory is associated and embodied by the imagination; delusion, or waking dreams.—*Bouvier*. See **DELUSIONS**.

HALYMOTE.—A holy or ecclesiastical court.

HALYWERC FOLK.—See **HAILWORK-FOLK**.

HAM.—A place of dwelling; a home close; a little narrow meadow.—*Blount*.

HAMBLING, or **HAMMELLING OF DOGS.**—Expedition (*q. v.*)—*Manw.*

HAMEL, **HAMELETA**, or **HAMLETA.**—A hamlet.

HAMESOKEN, or **HAMESUCKEN.**—The offence of violently invading a man's house.—*Cowell*.

HAMFARE.—Breach of the peace in a house.—*Cowell*.

HAMLET.—A vill, or little village.—*Cowell*.

HAMMA.—A close joining to a house; a croft; a little meadow.—*Cowell*.

HAMSOCA, or **HAMSOKEN.**—See **HAMESOKEN**.

HANAPER.—The hanaper was formerly an office on the common law side of the English Court of Chancery, the clerks in which, in the days when every action was commenced by an original writ issuing from the Chancery, registered the fines that were paid on every writ, and saw that the writs were sealed up in bags, in order to be opened afterwards and issued. (Gilb. Ch. 10.) "These writs and the returns to them were, according to the simplicity of ancient times, originally kept in a hamper, *in hanaperio*." (3 Bl. Com. 49.) It was also the duty of the clerk of the hanaper to take an account of all patents, commissions, and grants that passed the great seal. By the Stat. 15 and 16 Vict. c. 87, the duties of the office were transferred to the clerk of the crown. Rep. Comm. on Fees 4, 5. See **CHANCERY**; **PETTY BAG OFFICE**.

HANAPER OFFICE, (defined). 6 Johns. (N. Y.) 337, 363.

HAND.—(1) A measure of length equal to four inches, used in measuring the height of horses; (2) a person's signature (10 Mod. 103); (3) in old English law, an oath.

HAND AND SEAL, UNDER, (in a submission to arbitration). 2 Mod. 77.

HAND, UNDER HIS, (in a declaration). 5 Vt. 500.

HAND, UPLIFTED, (swearing by). 2 Hawks (N. C.) 458; 7 Wheel. Am. C. L. 312.

HAND, WITNESS MY, (in an agreement). 1 Munf. (Va.) 487.

HAND-BORROW.—A surety; a manual pledge.

HAND-FASTING.—Betrothment.

HAND-GRITH.—Peace or protection given by the king with his own hand.—*Cowell*.

HAND-HABEND.—A thief caught in the very act, having the thing stolen in his hand.

HANDICRAFT, (in a statute forbidding employment of small children). L. R. 6 Q. B. 718.

HANDLE, (as applied to freight). 5 Lans. (N. Y.) 480, 484.

HANDS, SET OUR, (in a deed). 2 Serg. & R. (Pa.) 504.

HANDS, UNDER THE, (in a bond). 2 Marsh. 304.

HANDS, UNDER THEIR, (in a declaration). 3 Conn. 266.

HANDS, WITNESS THE, (in a promissory note). 2 Leigh (Va.) 195.

HAND-SALE.—A custom among the northern nations of shaking hands to bind a bargain or contract.

HANDSEL.—Earnest money.

HANDSOME SUPPORT DURING LIFE, (in a will). 4 Wheel. Am. C. L. 454.

HANDWRITING.—In the law of evidence, where a document requires attestation for its validity, it is necessary to call the attesting witness, or one of them (if more than one), to prove the signature, but in the case of a document which, though not requiring attestation, has been attested, the signature may be proved as if it had not been attested. (Best Ev. 307.) Evidence as to the handwriting of a person may be given (1) by a person who saw him write the document in question; (2) by a person who has seen him write other documents and believes the writing in question to be his; the presumption arising from such evidence is called *præsumptio ex visu scriptiois*; (3) by a person who knows his handwriting from having corresponded with him or having had other opportunities of observing writing which there was reasonable ground for believing to be his (*p. ex scriptis olim visis*); (4) by an expert or other person who has com

pared the writing in question with a document known to be in the handwriting of the party (*p. ex scripto nunc viso*). Best Ev. 326. See ANCIENT WRITINGS; COMPARISON OF HANDWRITING; DOCUMENT.

HANDWRITING, (proof of). 5 Cush. (Mass.) 301; 13 Wend. (N. Y.) 83, 178.

HANGING.—In the old books, "hanging" is used in the sense of "pending." Thus, "hanging the process" means "pending the process." (Co. Litt. 13a.) As to the punishment of hanging, see DEATH, § 2.

HANGING IN CHAINS.—In atrocious cases it was at one time usual, in England, for the court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed, a practice quite contrary to the Mosaic law. (Deut. xxi. 23.) Abolished by 4 and 5 Will. IV. c. 26.—*Wharton*.

HANGMAN.—A public executioner; he who adjusts the halter and springs the trap at the legal execution of a criminal condemned to death.

HANGWITE, or HANGWIT.—A liberty to be quit of a felon or thief hanged without judgment, or escaped out of custody.—*Rast. Ent.*

HANIG.—Customary labor.

HANSE.—A commercial confederacy or society of merchants bound together for the good ordering and protection of the commerce of its members, and the good usage and safe passage of goods from place to place.—*Cowell; Du Cange; voc. Hansa*.

HANSE TOWNS.—See HANSEATIC.

HANSEATIC.—Pertaining to the Hanse Towns, or to their confederacy. The Hanse Towns in Germany were commercial cities associated for the protection of commerce as early as the twelfth century. To this confederacy acceded commercial cities in Holland, England, France, Spain, and Italy, until they amounted to seventy-two; which for centuries commanded the respect and defied the power of kings. From the middle of the fifteenth century, the power of the confederacy, though still formidable, began to decline. This was not owing to misconduct on the part of its leaders, but to the progress of that improvement it had done so much to promote. The civilization, which had been at first confined to the cities, gradually extended over the contiguous country; and feudal anarchy was everywhere superseded by a system of subordination and the progress of the arts. At present it only consists of Hamburg, Lübeck, and Bremen; and they indeed possess merely the shadow of their former state.—*Wharton*.

HANS GRAVE.—The chief of a company; the head man of a corporation.

HANTELODE.—An arrest.—*Jacob*.

HAP.—To catch.—*Cowell*.

HAPPEN TO DIE, (in a will). 1 Desaus. (S. C.) 137.

HAPPENING, (in a will). 13 Vr. (N. J.) 302.

HARACIUM.—A stud of horses and mares kept for breeding.—*Spel. Gloss*.

HARBINGER.—An officer of the royal household.

HARBOR.—

§ 1. In maritime law.—A harbor is a place naturally or artificially made for the safe riding of ships. (Couls. & F. Waters 42.) The term, therefore, includes "port" (*q. v.*), though the latter word has reference rather to the landing of cargo than to the safety of the ship.

§ 2. In England the crown has the prerogative of appointing or constituting ports and havens, and of declaring the limits of existing harbors, where they were not originally fixed. In practice, however, a harbor is now always constituted either by a special act of parliament, or by a provisional order of the board of trade, confirmed by act of parliament. (*Id.* 45; 2 Steph. Com. 499 *et seq.*; Stat. 24 and 25 Vict. c. 45.) The provisions of the Harbors, Docks, and Piers Clauses Act, 1847, (which contains clauses usually required in acts authorizing the construction of harbors, docks, and piers,) apply to harbors so formed. The crown is conservator of all ports and harbors. Its powers and duties in this respect are now chiefly exercised by the board of trade. (Stat. 25 and 26 Vict. c. 69; Couls. & F. Waters 45.) In America harbors fall to a certain extent under the control of congress under its power to regulate commerce, and large sums of money are frequently appropriated by congress for the improvement of harbors and navigable rivers, but matters of police regulation, the construction and leasing of piers and wharves, and other matters relative to the local management of harbors are within the jurisdiction of the municipality (city, county or township) where the harbor lies.

§ 3. To harbor, in the law of torts, is to secretly receive and conceal a fugitive

from the lawful custody of another, *e. g.* the harboring of a wife or apprentice, with intent to deprive the husband or master of their custody. Prior to the abolition of slavery, actions for damages for harboring fugitive slaves were frequently brought.

HARBOR, (in a statute). 9 Metc. (Mass.) 371, 377, 378.

HARBOR, ON THE, (meaning of). 15 Conn. 142.

HARBOR AUTHORITY.—In England a harbor authority is a body of persons, corporate or unincorporate, being proprietors of, or intrusted with, the duty of constructing, improving, managing or lighting any harbor. Stat. 24 and 25 Vict. c. 47.

HARBORED OR CONCEALED, (in a statute). 3 McLean (U. S.) 631, 638.

HARBORING, (what is). 5 How. (U. S.) 215. — (not synonymous with "concealing"). 2 Wall. Jr. (U. S.) 311, 317.

HARD LABOR.—A punishment said to have been introduced by 5 Anne c. 6. It may be added in most cases to the sentence of imprisonment. But the labor is not, as a rule, any harder than ordinary mechanical labor.

HARNASCA.—Defensive armor; harness. —*Spel. Gloss.*

HARNESSE.—All warlike instruments (Hoved. 725); also, the tackle or furniture of a ship.

HARO—HARRON.—An outcry after felons and malefactors.—*Jacob.*

HARRIOTT.—The old form of "heriot" (*q. v.*) Wms. Seis. 203.

HART.—A stag five years old.

HAS EXECUTED UNTO, (imports both making and delivery). 9 Cal. 430.

HASP AND STAPLE.—The old form of the entry of an heir into premises held by burgage tenure in Scotland. *See Bell Diet.*

HAT-MONEY.—A small duty paid to the captain and mariners of a ship, called "primage."

HAUBER.—A great baron or lord.—*Spel. Gloss.*

HAUGH, or HOWGH.—A green plot in a valley.

HAUR.—Hatred. Leg. W. I. c. 16.

HAUSTUS.—In the civil law, the right of drawing water, and of access to the place of drawing.

HAUTHONER.—A man armed with a coat of mail.—*Jacob.*

HAVE.—*See HABENDUM.*

HAVE AND HOLD, (in a grant). Cro. Jac. 172.
HAVE, OCCUPY AND ENJOY, (in a covenant). Com. L. & T. 61.

HAVEN.—A large and safe harbor. *See HARBOR.*

HAVING, (in a statute). 4 Rawle (Pa.) 323, 329; 1 Chit. Gen. Pr. 356; 8 Com. Dig. 408.

HAVING CHILDREN, (in a will). 7 T. R. 322.

HAW.—A small parcel of land so called in Kent; houses. Co. Litt. 5.

HAWARD.—*See HAYWARD.*

HAWBERK, or HAWBERT.—He who held land, in France, by finding a coat or shirt of mail, with which he was to be ready when called upon.

HAWGH.—A valley. Co. Litt. 5 b.

HAWKER.—A pedler, petty chapman, or other trading person going from town to town or to other men's houses, and traveling either on foot, or with horse or horses, or otherwise carrying to sell, or exposing to sale, any goods, wares, or merchandise. Hawkers are required to take out licenses in most of the States.

HAWKER, (defined). 12 Cush. (Mass.) 495.
— (indictment for trading as). 2 Ld. Ken. 317.

— (single act of selling does not constitute). 1 Burr. 609.

HAWKERS AND PEDLERS, (in a statute). 2 Watts (Pa.) 299.

HAWKING, (what constitutes). 10 Wend. (N. Y.) 99.

HAY.—A hedge or enclosure; a net to take game.—*Jacob.*

HAY-BOTE.—*See ESTOVERS.*

HAYWARD.—One who keeps a common herd of cattle of a town; and the reason of his being so called may be because one part of his office is to see that they neither break nor cross the hedges of enclosed lands; or because he keeps the grass from hurt and destruction. He is an officer appointed in the lord's court, to look to the fields and impound cattle trespassing thereon; to see that no pound breaches be made, and if any be, to present them to the leet, &c. Kit. 46.

HAZARD.—An unlawful game. 4 Steph. Com. (7 edit.) 272.

HAZARDOUS.—Risky. A word of frequent use in policies of insurance

against fire, especially in conjunction with qualifying words, *e. g.* "extra hazardous," "specially hazardous," "not hazardous," to indicate the character of the risk upon different kinds of property, and thus afford a basis for calculating the amount of premium (*q. v.*) to be paid to the insurer.

HAZARDOUS, (in insurance policy). 3 Harr. (N. J.) 481; 6 Wend. (N. Y.) 495, 627.

HAZARDOUS CONTRACT.—See ALEATORY CONTRACT.

HAZARDOUS GOODS, (in insurance policy). Moo. & M. 90.

HE, (in a statute, will not include a corporation). 12 Wend. (N. Y.) 392.

HE HAS REMOVED LAND-MARKS, (actionable words). 10 Serg. & R. (Pa.) 18.

HE KEEPS FALSE BOOKS, AND I CAN PROVE IT, (actionable words). 17 Johns. (N. Y.) 217.

HE PAYING FREIGHT, (in a bill of lading). 3 East 590.

HE PAYING THEREOUT, (in a will). 8 Com. Dig. 476.

HE SWORE A FALSE OATH, AND I CAN PROVE IT, (actionable words). 2 Dall. (U. S.) 58.

He who comes into equity must come with clean hands.—Thus, although an infant is not generally liable on his contracts, yet he cannot make use of his own fraudulent acts as a means whereby to benefit himself.

He who seeks equity must do equity.—It is in pursuance of this maxim that equity enforces the right of the wife's equity to a settlement. Snell Eq. (5 edit.) 374.

HEAD.—(1) The upper part or principal source of a stream; (2) chief, or principal.

HEAD OF A CREEK, (defined). 2 Bibb (Ky.) 110, 112.

HEAD OF A FAMILY.—A householder; one who provides for a family. A term used in the exemption and homestead laws of several of the States. See the cases referred to below.

HEAD OF A FAMILY, (who is). 2 How. (U. S.) 581, 590; 16 Bankr. Reg. 382; 8 Baxt. (Tenn.) 420; 3 Humph. (Tenn.) 216; 2 Tenn. Ch. 33.

— (who is not). 45 Ga. 483; 5 So. Car. 493.

— (in state constitution). 41 Ga. 153.

— (in a statute). 51 N. H. 253; 20 Mo. 75.

HEADBOROUGH.—The head of a borough; a high constable. King Alfred instituted tithings, so called from the Saxon, because ten freeholders and their families composed one. These all dwelt together, and were sureties or

free-pledges to the king for the good behavior of each other. One of the tithing was annually appointed to preside over the rest, and was called the "tithing-man," or "head-borough." Under the feudal law, he was an officer who had a principal government within his own pledge. He was also styled "borowhead," "borsholder," "third-borough," "tithing-man," &c., according to the usage and diversity of speech in several places. The head-boroughs were the chiefs of the ten pledges, the other nine being denominated "hand-borows," or "inferior pledges."—*Encycl. Lond.* See CONSTABLE.

HEAD-COURTS.—Certain tribunals in Scotland, abolished by 20 Geo. II. c. 50. Ersk. i. 4, 5.

HEAD-LAND.—The upper part of land left for the turning of the plough, whence the headway. Kenn. Par. Antiq. 587.

HEAD-PENCE.—An exaction of a certain sum collected by the sheriff of Northumberland from the inhabitants of that county, without any account thereof to be made to the crown. Abolished by 23 Hen. VI. c. 7.

HEAD-SILVER.—Dues paid to lords of leets; also, a fine of £40 which the sheriff of Northumberland exacted of the inhabitants twice in seven years.

HEAFODWEARD.—One of the services to be rendered by a thane and a geneat, or a villainus, but in what it consisted seems uncertain.—*Anc. Inst. Eng.*

HEALFANG, HEALSFANG, or HALSFANG.—The pillory; also, a pecuniary mulct, to commute for standing in the pillory.—*Spel. Gloss.*

HEALGEMOTE.—A court-baron; an ecclesiastical court.

HEALTH.—The state of freedom from physical pain or disease. Injuries affecting a person's health are, where by any unwholesome practices of another, a man sustains any damage in his vigor or constitution, as by selling him bad provisions or wine, by the exercise of a noisome trade, which infects the air in his neighborhood, or by the neglect or unskilful management of a surgeon, apothecary, or other medical man who attends him. The remedy is by an action on the case for damages, and in cases of gross misconduct, the wrongdoer may be indicted. Establishments used in carrying on noisome trades may also be proceeded against as nuisances. See ABATEMENT, § 1; ADULTERATION; NUISANCE.

HEALTH, GOOD STATE OF, (representations preliminary to effecting a policy of life insurance). 4 Bing. 60.

HEALTH LAWS.—Laws passed for the protection of the health of the community.

HEALTH OFFICER.—An officer whose duty it is to enforce the health laws. *See* BOARD OF HEALTH.

HEALTHY, (defined). 13 Ired. (N. C.) L. 356, 357.

HEALTHY AND ABLE-BODIED, (what is). 15 Vt. 200.

HEAR AND DETERMINE, (in a statute). Penn. (N. J.) 107; 1 Ld. Raym. 509.

HEARD, (in statute relative to indictments). 2 Mass. 304.

HEARD AND DETERMINED, (in a statute). 4 Dowl. & Ry. 445.

HEARING.—Under the practice in Chancery, the hearing of a cause is the argument of it in court after the conclusion of the pleadings and the close of the evidence. In the case of a suit heard on motion for decree, the original hearing on the motion for decree frequently does not dispose of the suit, but makes it necessary to have a subsequent hearing on further consideration (*q. v.*) Under the reformed practice, the hearing of an action generally takes the form either of a trial or a motion for judgment (*q. v.*)

HEARING, (as applied to removal of causes, defined). 28 Mich. 527.

HEARING, THE, (in a statute). 4 Ch. D. 189, 196.

HEARSAY EVIDENCE.—

§ 1. Evidence of what the witness heard some one else say.

§ 2. **The testimony of a deceased witness,** who has been examined upon oath, on the trial of a former action between the same parties, and where the point at issue was the same, is admissible on the trial of the second action, and may be proved by one who heard him give evidence; for such evidence on the former trial was not given in an extra-judicial manner, but upon oath; the parties to the suit were the same, and an opportunity was given for cross-examination.

§ 3. **Res gestæ.**—Hearsay is often admitted in evidence, as part of the *res gestæ* or transaction which is the subject of inquiry; the meaning seems to be, that where it is necessary in the course of a cause to inquire into the nature of a particular act, or the intention of the party

who did the act, proof of what the person said at the time of doing it is admissible in evidence, for the purpose of showing its true character.

§ 4. **The exceptions** to the general rule as to the inadmissibility of hearsay evidence are the following: (1) dying declarations; (2) hearsay in questions of pedigree; (3) hearsay on questions of public right, customs, boundaries, &c.; (4) admissibility of old leases, rent rolls, surveys, &c.; (5) admissibility of declarations against interest. 1 Stark. Ev. 24; 1 Phil. Ev. 229; Tayl. Ev. § 507 *et seq.*

HEARSAY EVIDENCE, (what is). 3 T. R. 707; 13 Ves. 143, 514.

— (when admissible). 10 Pet. (U. S.) 434; 1 Pet. (U. S.) C. C. 496; 1 Wheat. (U. S.) 6; 1 Coxe (N. J.) 333; 4 Campb. 414; 1 Mau. & Sel. 679, 686.

— (when not admissible). 7 Cranch (U. S.) 290; 3 Halst. (N. J.) 249; 4 *Id.* 209; 8 East 539.

HEARTH-MONEY.—A tax levied by 14 Car. II. c. 10, of two shillings upon every hearth in England. It was productive of great discontent, and was abolished by 1 W. & M. Stat. 1, c. 10.

HEARTH-SILVER.—A kind of composition for tithes.

HEAT OF PASSION, (distinguished from "deliberately"). 3 Crim. Law Mag. 79.

HEBBERMEN.—Fishermen or poachers below London Bridge, who fished for whittings, flounders, smelts, &c., commonly at ebbing water. Punishable by Stat. 4 Hen. VII. c. 15.—*Jacob.*

HEBBERTHEF.—The privilege of claiming the goods and trial of a thief within a certain liberty.—*Cowell.*

HEBBING-WEARS.—A device for catching fish in ebbing water. Stat. 23 Hen. VIII. c. 5.

HEBDOMAD.—A week; a space of seven days.

HEBDOMADIUS.—A week's man, canon, or prebendary in a cathedral church, who has the care of the choir and the officers belonging to it, for his own week.—*Red. Episc. Hereford MSS.*

HECCAGIUM.—Rent paid to a lord of the fee for a liberty to use the engines called "hecks."

HECK.—An engine to take fish in the river Ouse. Stat. 23 Hen. VIII. c. 18.

HEDA.—A small haven, wharf, or landing-place.

HEDAGIUM.—Toll or customary dues at the hithe or wharf, for landing goods, &c., from which exemption was granted by the crown to some particular persons and societies.

HEDGE-BOTE.—Materials to make hedges, which a lessee for years, &c., may of common right take from the land leased.

HEDGE-PRIEST.—A vagabond priest in olden time.

HEGEMONY.—The leadership of one among several independent confederate States.

HEGIRA.—The epoch or account of time used by the Arabians and the Turks, who begun their computation from the day that Mahomet was compelled to escape from Mecca, which happened on Friday, July 16, A. D. 622, under the reign of the Emperor Heraclius.

HEGUMENOS.—The leader of the monks in the Greek church.

HEIFER, (defined). 2 Mont. T. 543, 545, ——— (when distinguishable from "cow"). 8 Allen (Mass.) 403, 404.

HEINECCIUS was born at Eisenberg in 1681, became professor in Halle, and died in 1741. He wrote numerous works on Roman law, which, though somewhat out of date, are still occasionally referred to. The principal, are the *Elementa Juris Civilis* and the *Antiquitatum Syntagma*. Holtz. Encycl.

HEIR.—NORMAN-FRENCH: *heire*; from Latin, *heres*.

§ 1. The word heir, when used to describe or designate a given person, includes three classes: Heirs-at-law, or heirs, simply; heirs apparent; and heirs presumptive.

§ 2. **Heir-at-law.**—An heir, or heir-at-law, is a person who stood in such a degree of relationship to a deceased person, called the "ancestor," that the property of the latter has descended to him, or would have descended to him if the ancestor had died intestate. The mode in which the relationship is to be computed is regulated by the canons of descent. See DESCENT.

§ 3. **At common law: Customary—General—Special.**—With reference to the rules of descent, by virtue of which they inherit, heirs are of the following kinds: (1) The heir at common law is he to whom his ancestor's land, &c., descend according to the common law as modified by the Inheritance Act, as opposed to (2) a customary heir or special heir, (Co. Litt. 376a,

386b,) who inherits by virtue of a custom, such as gavelkind or borough-English; (3) an heir general takes by descent as fixed by law, as opposed to (4) an heir special or heir in tail, who claims as issue in tail *per formam doni*, i. e. according to the nature of the estate tail (8 Co. 166a); hence, heirs special are called "heirs male of the body," "heirs in special tail," &c., according to the variety of the entail. See ESTATE TAIL.

§ 4. **Lineal—Collateral—Whole-blood—Half-blood, &c., &c.**—With reference to the nature and degree of the relationship between the ancestor and the heir: (1) Formerly a person was said to be "lineal-heir," if he was lineally descended from his ancestor, as son, grandson, &c.; for descent could not be traced lineally upwards from son to father, but now an heir may be a lineal descendant or a lineal ancestor; (2) a collateral heir is related to his ancestor by being descended with him from a common progenitor, as in the case of brothers, cousins, nephew and uncle &c.; (3) an heir of the whole-blood is descended from the same pair of progenitors as his ancestor, while (4) an heir of the half-blood and his ancestor have only one common progenitor. Thus, A., and B., his wife, have two sons, X. and Y.: B. dies, and A. marries C., and they have a son Z.; here Y. is heir of the full-blood to X., but only heir of the half-blood to Z.; (5) heirs of the part of the father are those related by blood to the father of the ancestor (e. g. a paternal uncle), and (6) heirs of the part of the mother are those related by blood to the mother of the ancestor (Co. Litt. 12a), but this distinction is not now of importance (see DESCENT, § 12); (7) heir by propinquity is where the heir takes as being the nearest blood relation, as opposed to (8) heir by representation, where he takes as representing or standing in the place of his ancestor. *Id.* 10b. See the fourth canon of descent, DESCENT, § 5. The following distinctions are not now of practical interest: Immediate heir was formerly used to signify that the heir was heir apparent or presumptive at the death of the ancestor, as opposed to the case where there is an intermediate descent without seisin. (See DESCENT, § 3 and note (6); Vin. Abr. Heir

G. 2.) Formerly, in England, a person might be heir and not absolutely heir; as if land descended to an heir presumptive and afterwards a nearer heir was born (Co. Litt. 11b); but now this is impossible, except in the case of a posthumous heir being born.

§ 5. **By limitation, and in fact.**—When land is given to the heir of a person, the heir claims not by descent from his ancestor, but by purchase from the donor, the word heir being used as a *descriptio personæ*; and hence he is called “heir by limitation,” as opposed to the heir in fact, heir in deed, or actual heir. If a testator devises land to his own heir-at-law, the latter takes as devisee and not as heir. (Vin. Abr. Heir, G. 3.) Right heir seems to mean sometimes heir at common law, (Bro. Abr. Discent 59; Done 42,) and sometimes rightful heir, as opposed to a supposititious heir. (Co. Litt. 8b.) *Hæres astrarius* is used in the old books to denote an heir apparent to whom his ancestor has conveyed the inheritance in his lifetime, and he is so called of *astre*, (modern French, *âtre*,) a hearth, used figuratively for a dwelling-house. (Co. Litt. 8b.) As to mesne heirs, see SEISIN.

§ 6. **Co-heirs** are two or more persons who take by the same descent. Thus, if a tenant of gavelkind land in England leaves several sons, they take as co-heirs. So, if a tenant of ordinary land leaves no son and several daughters, they take his land as co-heiresses. (Litt. §§ 241, 265. See CO-PARCENERY.) In America, all the children of a deceased person are co-heirs, the doctrine of primogeniture not having been adopted.

§ 7. **Apparent, and presumptive.**—An heir apparent is a person who will be heir to his ancestor if he survives him. He is not heir, in the proper sense of the word, until after the death of his ancestor, for “*nemo est hæres viventis*.” Formerly, in England, heir apparent was applied to the nearest living heir, for he would be heir if the ancestor died immediately, while a distinction was taken between an heir apparent who must be heir in any event (“certain and perdurable heir apparent”), and an heir apparent whose claim is liable to be defeated wholly or partially by the

birth of a nearer heir or co-heir. (Co. Litt. 8b, 35b.) At the present day, however, heir apparent means him who, if he survives his ancestor, must be his heir, *e. g.* an eldest son in ordinary cases, while any other heir is called an “heir presumptive,” because his claim to inherit is liable to be defeated by the birth of a nearer heir. 2 Bl. Com. 208.

§ 8. **Immediate, and remote.**—An heir apparent or presumptive is an immediate heir, *i. e.* he is the nearest blood relation capable of inheriting to his ancestor. All other blood relations capable of inheriting are called “remote heirs.” Thus, A’s eldest son is his immediate heir, and his younger son is his remote heir. Co. Litt. 242b.

§ 9. **As a word of limitation.**—Heir is also used as a word of limitation to denote the quality of an estate of inheritance on its creation. In England, and in some of the States, an estate in fee cannot be created by deed without the words, “and his heirs,” following the name of the grantee. “Tenant in fee-simple is he which hath lands or tenements to hold to him and his heirs for ever.” (Litt. § 1.) If land is conveyed to A. simply, A. merely takes an estate for life. (*Id.*; see Co. Litt. 8b.) Similarly, an estate tail is properly created by the words, “and the heirs of his body,” following the name of the grantee. In wills and agreements words of inheritance are not generally required. See ESTATE TAIL; FEE; WORDS OF LIMITATION.

§ 10. Heir and heirs are used in a popular sense, especially by testators, to signify the eldest son, or all the children, or the devisee, or the next of kin of a given person. The meaning to be given to the word is a question of construction, on which several rules have been laid down. See 2 Jarm. Wills 76. See BASTARD; EXPECTANT HEIR; MONSTER.

HEIR, (defined). 44 Cal. 253; 5 Kan. 384 n.; 18 B. Monr. (Ky.) 329; 26 La. Ann. 413; 45 Me. 250, 261; 63 Id. 368, 379; 25 Mich. 185, 188; 32 Id. 47; 2 Hawks (N. C.) 472; 9 Ired. (N. C.) L. 278, 279; 1 Hen. & M. (Va.) 289; 4 Wheel. Am. C. L. 400; Hob. 75; 1 P. Wms. 232.

— (when means “heir apparent”). 22 Me. 257; 1 Wash. (Va.) 388; Reeve Dom. Rel. 486.

— (in a lease). Cro. Jac. 145.

— (in a statute). 2 Swan (Tenn.) 446.

— (in a will). 4 Halst. (N. J.) 10, 14; 3 Binn. (Pa.) 374; 5 Rawle (Pa.) 9; 4 Com. Dig. 154.

HEIR APPARENT.—See HEIR, § 7.

HEIR-AT-LAW, or HEIR GENERAL.—See HEIR, § 2.

HEIR-AT-LAW, (defined). 2 Wall. Jr. (U.S.) 368.

— (in a will). 7 Bing. 226.

HEIR BENEFICIARY.—A civil law term for an heir who has accepted the succession under the benefit of an inventory, *i. e.* he is only to be liable for the debts of the deceased to the amount of the actual value of the succession.

HEIR BY CUSTOM.—See HEIR, § 3.

HEIR BY DEVISE.—See HEIR, § 5.

HEIR COLLATERAL.—See HEIR, § 4.

HEIR CONVENTIONAL.—A civil law term for one who becomes entitled to a succession by virtue of a contract *inter vivos*, as distinguished from the "heir legal," or "heir testamentary" (*qq. v.*)

HEIR FORCED.—See FORCED HEIR.

HEIR LEGAL.—A civil law term for one whose blood relationship to the deceased entitles him to the succession by force of law, as distinguished from an "heir conventional," or "heir testamentary" (*qq. v.*)

HEIR LEGAL, (in a will). 1 Grant (Pa.) Cas. 60.

HEIR MALE, (in a will). 3 Mas. (U.S.) 391; 10 R. I. 509.

HEIR MALE OF HIS BODY, (in a will). 1 Root (Conn.) 555.

HEIR OR HEIRS WHO SHOULD BE LEGALLY ENTITLED TO THE SAME, (in a will). 8 Jur. 234.

HEIR PRESUMPTIVE.—See HEIR, §§ 7, 8.

HEIR PRESUMPTIVE, (distinguished from "heir apparent"). Lofft 273.

HEIR SPECIAL.—See HEIR, § 3.

HEIR TESTAMENTARY.—A civil law term for one who is made heir by will, as distinguished from an "heir legal," or "heir conventional" (*qq. v.*)

HEIRDOM.—Succession by inheritance.

HEIRESS.—A female heir. See HEIR.

HEIRLOOMS.—Such goods and personal chattels as, contrary to the nature of chattels, go by special custom to the heir or devisee of the owner, along with the inheritance, and not to his executor.

It is said that the owner of an heirloom cannot dispose of it by will so as to sever it from the inheritance, although he may dispose of it during his lifetime. (2 Bl. Com. 427; Co. Litt. 18b, 185b; 12 Co. 105.) Heirlooms, in the strict sense, are rare. When personal property is left by will, or settled so as to descend like a proper heirloom as far as the rules of law allow, it is called an "heirloom by devise" or "settlement," or a "quasi-heirloom." See CHATTELS.

HEIRS, (meaning of, in devises and bequests, distinguished). 1 Hun (N. Y.) 601.

— (when means "children"). 39 Ala. 175; 8 Bush (Ky.) 115; 2 Pick. (Mass.) 243; 4 Id. 198, 208; 72 Mo. 492; 51 Barb. (N. Y.) 137; 66 N. Y. 42; 15 Ohio 559; 8 Humph. (Tenn.) 323; 11 L. J. N. S. Ch. 155; 3 T. R. 493.

— (not synonymous with "children"). 66 N. Y. 42.

— (when meaning more remote descendants than "children"). 4 T. R. 750.

— (when means "heirs apparent"). 1 Dev. (N. C.) Eq. 270.

— (when means "heirs of the body"). 35 Me. 349.

— (when means "issue"). 5 Har. & J. (Md.) 10; 32 Mich. 47; 68 N. Y. 41; 4 Wheel. Am. C. L. 372; 6 Jur. 909.

— (not synonymous with "issue"). 3 J. Marsh. (Ky.) 236; 3 Edw. (N. Y.) 1, 9.

— (alien issue are not). 4 Wheat. (U.S.) 453, 461.

— (when means "next of kin"). 2 Beas. (N. J.) 109.

— (as a word of limitation). 4 Paige (N. Y.) 293, 296; 3 Wend. (N. Y.) 503, 511, 521; 8 Wheel. Am. C. L. 411; Reeve Dom. Rel. 456.

— (as a word of purchase). 67 Pa. St. 446; 1 Serg. & R. (Pa.) 157; Reeve Dom. Rel. 463.

— (in articles of marriage settlement). 1 Barn. & C. 238.

— (in a bond). Dyer 368 a.

— (in a codicil). 1 Jac. & W. 34.

— (in a covenant). 6 Yerg. (Tenn.) 96; 4 Wheel. Am. C. L. 62.

— (in a deed). 10 Allen (Mass.) 431; 16 Gray (Mass.) 568, 572; 121 Mass. 307, 309; 2 C. E. Gr. (N. J.) 17; 1 Dru. & W. 1; 2 Jac. & W. 1; 2 Ld. Raym. 1152; 18 Ves. 422; Co. Litt. 9a.

— (in a deed of trust). 109 Mass. 589; 11 Am. Rep. 744.

— (in a lease). 2 Barn. & C. 197.

— (in a life insurance policy). 88 Ill. 251.

— (in a statute). 52 Tex. 375.

— (in a will). 8 Wheat. (U.S.) 495; 7 B. Monr. (Ky.) 607; 18 Id. 367, 371; 8 Bush. (Ky.) 115, 120; 11 Id. 646; 8 Dana (Ky.) 442; 2 Duv. (Ky.) 296; 1 Metc. (Ky.) 277; 4 Allen (Mass.) 466; 12 Cush. (Mass.) 386; 16 Gray (Mass.) 104, 307; 7 Metc. (Mass.) 175; 8 Id. 450; 9 Id. 148; 11 Id. 23; 8 Mass. 3, 38; 16 Id. 244; 108 Id. 576; 115 Id. 124; 120 Id. 343; 40 Miss. 758; 1 Halst. (N. J.) 114; 2 Id. 379; 1

Harr. (N. J.) 181, 185; South. (N. J.) 303, 413; 40 Barb. (N. Y.) 144; 3 Den. (N. Y.) 485; 4 Edw. (N. Y.) 131; 18 N. Y. 412; 38 *Id.* 410; 59 *Id.* 149; 5 Paige (N. Y.) 464; 12 Wend. (N. Y.) 602; 1 Dev. (N. C.) Eq. 189; 2 *Id.* 509; 4 Hawk. (N. C.) 393; 1 Jones (N. C.) Eq. 114; 2 *Id.* 28; 1 Jones (N. C.) L. 221; 30 Ohio St. 288; 1 Binn. (Pa.) 546; 3 *Id.* 139; 5 Pa. St. 461; 45 *Id.* 601; 14 Serg. & R. (Pa.) 40; 4 Watts (Pa.) 83; 2 Whart. (Pa.) 376, 381; 1 McMull. (S. C.) Eq. 201; 1 Head (Tenn.) 411; 2 W. Bl. 1010; 1 Cro. 164; Cro. Jac. 22, 695; 4 East 313, 318; 12 *Id.* 517; L. R. 15 Eq. 110, 151; 1 P. Wms. 23; 2 Phil. 583; 4 Russ. 384; 1 T. R. 630.

HEIRS, (not necessary to give an inheritance to trustees). Amb. 95.

——— (*scire facias* against). 5 Hayw. (Tenn.) 280.

HEIRS ABOVE NAMED, (in a will). 52 Ind. 401.

HEIRS, ALL MY, (means only the children of the testator and their descendants, and not the widow). 73 Ind. 412.

HEIRS AND ASSIGNS, (in a deed). 9 Allen (Mass.) 159, 168; 3 Dowl. & Ry. 414.

——— (in an indenture). 4 Serg. & R. (Pa.) 109.

——— (in a will). 100 Mass. 345; L. R. 4 Eq. 171; L. R. 6 Ex. 291; Love. Wills 154.

HEIRS-AT-LAW, (who are). 9 Pet. (U. S.) 484.

——— (grant to). 12 Mass. 447.

——— (in an award). 4 Rand. (Va.) 95.

——— (in a declaration). 7 Dowl. & Ry. 517.

——— (in a statute). 9 Pet. (U. S.) 793.

——— (in a will). 3 Allen (Mass.) 587; 5 *Id.* 249; 122 Mass. 535, 536; 128 *Id.* 38, 40; 23 Hun (N. Y.) 305; 2 Bli. 1; 5 Ves. 403.

HEIRS BORN, (in a deed). 6 Ala. 631.

HEIRS, DEVISEES, OR LEGAL REPRESENTATIVES, (used as words of purchase). 3 Edw. (N. Y.) 251.

HEIRS FEMALE, (in a will). Co. Litt. 24 b.

HEIRS FOREVER, (in a will). 4 Halst. (N. J.) 50; 2 Desaus. (S. C.) 94; 1 Call (Va.) 343.

HEIRS, HER, (in a will). 8 Serg. & R. (Pa.) 71.

HEIRS, LAWFUL, (equivalent to "heirs of the body"). 3 Com. Dig. 134.

——— (equivalent to "heirs of the body," or "issue"). 9 Jur. 269.

——— (equivalent to "lawful issue"). 69 Pa. St. 190.

HEIRS LAWFULLY FROM HER BODY BEGOTTEN, (in a will). 3 Gr. (N. J.) 408.

HEIRS, LEGAL, (in a policy of insurance). 88 Ill. 254.

——— (in a will). 63 Me. 368; 18 Am. Rep. 234; 2 Ired. (N. C.) Eq. 72.

HEIRS MALE, (as synonymous with "issue male"). 5 T. R. 305.

——— (when words of purchase). 58 Me. 191.

——— (in a deed). 5 Bro. P. C. 93; 1 P. Wms. 73, 77, 78; 4 Ves. 794.

——— (in a will). 3 Day (Conn.) 332; 1 Root (Conn.) 79, 80; Penn. (N. J.) 819, 825; 12 Wend. (N. Y.) 83; 4 Wheel. Am. C. L. 399; 5 Barn. & C. 48; 10 Bing. 198; 3 Bos. & P. 627; 5 Burr. 2615; 3 Mod. 123; 11 *Id.* 189; 1 P. Wms. 58; 2 *Id.* 3; 4 Ves. 326; 1 Wils. 30, 31.

HEIRS MALE OF THE BODY, (in a will). 1 East 264.

HEIRS, MY, (in a will). 25 Ind. 63.

HEIRS OF BODY, (in a will). L. R. 2 Eq. 276.

HEIRS OF HIS BODY, (appropriate words to create an estate tail). 2 Bouv. Inst. 224.

——— (in articles of marriage agreement).

Reeve Dom. Rel. 484.

——— (in a deed). 17 Ga. 81; 1 Penn. (N. J.) 291.

——— (in a grant). 2 Root (Conn.) 205.

——— (in a will). 1 Root (Conn.) 96; 2 *Id.*

39; 10 B. Monr. (Ky.) 56; 1 Harr. (N. J.) 172; South. (N. J.) 427, 431; 2 N. Y. 386; 6 *Id.* 419; 1 Desaus. (S. C.) 353; 3 Rich. (S. C.) Eq. 156; 18 Am. Rep. 589; 1 Atk. 286; 2 Burr. 1100; 11 East 672; L. R. 3 H. L. 121; 1 P. Wms. 56.

HEIRS OF HIS BODY LAWFULLY BEGOTTEN, (synonymous with "issue"). 2 Har. & G. (Md.) 42, 53.

HEIRS OF THE BODY, (who are). 2 Bli. 49.

——— (when means "children"). 5 Barn. & C. 866.

——— (when words of limitation). 68 Ill. 594; 2 Johns. (N. Y.) Cas. 384.

——— (when words of purchase). 1 Am. L. J. 193.

——— (in an indenture). 9 Mod. 236.

——— (in a statute). 115 Mass. 262, 277.

——— (in a will). 37 Ala. 174; 10 B. Monr. (Ky.) 59, 104, 106; 2 Metc. (Ky.) 335, 469; 7 Allen (Mass.) 72; 9 Mass. 160, 167; 1 Rich. (S. C.) Eq. 141; Eden 119; 7 Jur. 295; 12 L. J. N. s. Ch. 359.

HEIRS OF THE BODIES, (in a will). 4 Burr. 2579.

HEIRS OF THE FULL BLOOD, (in a will). 40 Ga. 562.

HEIRS OF THEIR BODIES FOREVER, (in a will). 5 Ind. 283.

HEIRS OF THEM, (equivalent to "their heirs"). 21 Pa. St. 343.

HEIRS OR NEXT OF KIN, (in a will). L. R. 9 Ch. D. 607.

HEIRS PROCEEDING FROM HIS BODY, (in a will). 2 Dev. (N. C.) Eq. 307.

HEIRS, RIGHT, (in a will). 12 L. J. N. s. Ch. 187.

HEIRSHIP.—The quality or condition of being heir, or the relation between the heir and his ancestor.

HEIRSHIP MOVABLES.—In the Scotch law, those things which the law withholds from the executors and next of kin, and gives to the heir, that he may not succeed to a house and lands completely dismantled. They consist of the best of everything; furniture, horses, cows, oxen, farming utensils, &c., but do not include "fungibles" (*q. v.*)

HELD, (defined). 7 So. Car. 88, 99.

HELD AND OWNED, (in a statute). 23 Hun (N. Y.) 341.

HELD BY THEM IN TRUST, (in a policy of insurance). 36 Md. 398.

HELL.—A place under the exchequer chamber, where the king's debtors were confined.

HELM.—Thatch or straw; a covering for the head in war; a coat-of-arms bearing a crest; the tiller or handle of the rudder of a ship.

HELOWE-WALL.—The end-wall covering and defending the rest of the building. Kenn. Par. Ant. 573.

HELSING.—A Saxon brass coin, of the value of an English half-penny.

HEMOLDBORH, or HEMELBORCH.—A title to possession. The admission of this old Norse term into the laws of the Conqueror is difficult to be accounted for; it is not found in any Anglo-Saxon law extant.—*Anc. Inst. Eng.*

HENCEFORTH, (in a lease). Cro. Jac. 258.

HENCEFORWARD, (synonymous with "hereafter"). 7 Pick. (Mass.) 128 n.

HENCHMAN.—A page; an attendant; a herald.

HENEDPENNY.—A customary payment of money instead of hens at Christmas; a composition for eggs.—*Cowell.*

HENFARE.—A fine for flight on account of murder.—*Domesd.*

HENGGEN.—A prison for persons condemned to hard labor.—*Anc. Inst. Eng.*

HENGHEN.—A prison; a house of correction.

HENGWITE.—*See* **HANGWITE.**

HEORDFÆTE, or HUDEFÆST.—A master of a family, keeping house, distinguished from a lower class of freemen, viz.: *folgeras (folgarii)*, who had no habitations of their own, but were house-retainers of their lords.—*Anc. Inst. Eng.*

HEORDPENNY.—Peter-pence.—*Cowell.*

HEORDWERCH.—The service of herds-men, done at the will of their lord.

HEPTARCHY.—A government exercised by seven persons, or a nation divided into seven governments. In the year 560, seven different monarchies had been formed in England by the German tribes, namely: That of Kent, by the Jutes; those of Sussex, Wessex, and Essex, by the Saxons; and those of East Anglia, Bernicia, and Deira, by the Angles. To these were added, about the year 586, an eighth, called the "kingdom of Mercia," also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These States formed together what has been designated the "Anglo-Saxon Octarchy," or more commonly, though not so correctly, the "Anglo-Saxon Heptarchy," from the custom of speaking of Deira and Bernicia under the single appellation of the "kingdom of Northumberland."—*Wharton.*

HERALD.—An officer who registers genealogies, adjusts ensigns armorial, regulates funerals, and carries messages between princes, and proclaims war and peace. Heralds were anciently called "dukes-at-arms," probably from the Latin, *ducere ad arma*; because the conducting of affairs concerning peace and war devolved upon them, their office being to carry messages to the enemy, and to proclaim war or peace. Hence, the persons of heralds were deemed sacred by the law of nations, and were received and protected by belligerent powers, as flags of truce are in the present day.

HERALDRY.—(1) The science of heralds; (2) an old and obsolete abuse of buying and selling precedence in the paper of causes for hearing. *See* North's Life of Lord-Keeper Guildford, vol. i. 435.

HERALDS' COLLEGE.—An ancient royal corporation, in England, first instituted by Richard III., in 1483, situated on St. Bennet's Hill, near St. Paul's, in the city of London. The above named heralds, together with the earl-marshal and a secretary, are the members of this corporation; in all, thirteen persons. The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to enquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees. (3 Stark. Ev. 843.) The heralds' office is still empowered to make grants of arms and to permit change of names. *See* **SURNAME.**

HERBAGE.—The same as "vesture" (*q. v.*) Co. Litt. 4b.

HERBAGE, (common of). 17 Ch. D. 567.

— (grant of does not convey the soil). 1 Pick. (Mass.) 224.

HERBAGIUM ANTERIUS.—The first crop of grass or hay, in opposition to "after-math," or second cutting. Kenn. Par. Ant. 459.

HERBENGER, or HARBINGER.—An officer in the royal house, who goes before and allots the noblemen and those of the household their lodgings; also, an innkeeper.

HERBERGAGIUM.—Lodgings to receive guests in the way of hospitality.—*Cowell.*

HERBERGARE.—To harbor; to entertain.

HERBERGATUS.—Spent in an inn.—*Cowell.*

HERBERY, or HERBURY.—An inn.—*Cowell.*

HERCE, or HERCIA.—A harrow.—*Fleta*, 1, 2, c. lxxvii.

HERCIARE.—To harrow. 4 Inst. 270.

HERDEWICH, or HERDEWIC.—A grange or place for cattle or husbandry. Mon. Ang. part 3.

HERDWERCH, or HEORD-WERCH.—Herdsman's work, or customary labor, done by shepherds and inferior tenants, at the will of the lord.—*Cowell.*

HEREAFTER, (in a covenant). 5 Halst. (N. J.) 20, 26.

— (in a statute). 106 Mass. 269; 115 *Id.* 400, 404; 15 N. Y. 595.

— (synonymous with "henceforward"). 7 Pick. (Mass.) 128 n.

HEREBANNUM.—A mulct for not going armed into the field when summoned.—*Spel. Gloss.*

HEREBOTE.—The royal edict, summoning the people to the field.—*Cowell.*

HEREBY, (in a will). 11 So. Car. 295.

HEREDAD.—In the Spanish law, a piece of cultivated land.

HEREDERO.—In the Spanish law, an heir or devisee.

HEREDITAMENT.—Low LATIN: *hereditamentum* (Du Cange s. v.), from *hereditas*, inheritance. The word seems to be a comparatively modern word in English law. The old word is *heritage*. Britt. 186 b.

§ 1. "Whatsoever may be inherited is an hereditament." (Co. Litt. 6a; Shep. Touch. 91.) In other words, when a right is of such a nature that on the death of its owner intestate it descends to his heir, it is a hereditament. The term includes a few rights unconnected with land, but it is generally used as the widest expression for real property of all kinds, and is therefore employed in conveyances after the words "lands," and "tenements," to include everything of the nature of realty which they do not cover.

The principal division of hereditaments is into those which lie in livery, and those which lie in grant. See GRANT; LIVERY.

§ 2. **Lying in livery, or corporeal.**—Hereditaments lying in livery are those

whereof livery of seisin can be made, such as lands, houses, &c. In other words, they are visible and tangible objects, and are hence also called "corporeal hereditaments." Shep. Touch. 228; Co. Litt. 9a; Wms. Real Prop. 10.

§ 3. **Lying in grant, or incorporeal.**—Hereditaments lying in grant are those whereof no livery of seisin can be made, because they are mere rights, but they pass by deed of grant without more. They include (1) reversions, remainders, and other executory interests in land; and (2) incorporeal hereditaments, namely: advowsons, tithes, easements, profits *à prendre*, services, rents, annuities, offices, dignities, franchises, &c. (2 Bl. Com. 21; Co. Litt. 47a, 165a; Shep. Touch. 228.) Some writers include reversions and remainders among incorporeal hereditaments, and distinguish incorporeal hereditaments in the strict sense by calling them hereditaments purely incorporeal; but the classification is neither correct nor convenient. Wms. Real Prop. 241, 322; 1 Steph. Com. 647 n. In Co. Litt. 47a, reversions and remainders are expressly opposed to incorporeal hereditaments.

§ 4. **Real, personal, and mixed.**—Another division of hereditaments is into real, personal, and mixed. Real hereditaments are lands and tenements. A personal hereditament is one which concerns neither lands nor tenements, such as an annuity granted to a man and his heirs. A mixed hereditament is partly real and partly personal, as where "the king created an earl of such a county or other place, to hold that dignity to him and his heirs, this dignity is personall, and also concerneth lands and tenements." Co. Litt. 2a.

§ 5. **Legal, or equitable.**—Hereditaments are also either legal, namely, such as descend to the heir by the rules of the common law, as in the preceding examples, or equitable, namely, those rights which exist only by the rules of equity. Thus, an equity of redemption (*q. v.*) and the interest of an heir in money directed to be laid out in the purchase of land, are equitable hereditaments. Burt. Comp. Eq. § 1443. See CONVERSION.

§ 6. **Collateral.**—Coke says, that the franchises of chase, warren, and park are

collateral hereditaments, and not issuing out of the soil like rights of common, "and, therefore, if a man hath a chase in other men's grounds, and after purchase the grounds, the chase remaineth." (4 Inst. 318.) In other words, it is not extinguished by unity of seisin, being a privilege distinct from the land. See Com. Dig. Chase D.

§ 7. **Entire—Several—Divisible—Indivisible.**—An entire hereditament is one, the parts of which are connected together, as opposed to several hereditaments which are unconnected with one another; as if a man has two estates which are separated from one another by land belonging to other persons. (See Co. Litt. 252b.) Entire hereditaments, again, are either divisible or indivisible. Thus, a piece of land or a rent-charge is divisible, while an advowson or a common *sans nombre* cannot be divided; the former from its nature, the latter because its division would increase the charge to the owner of the commonable land. An advowson, however, may in effect be divided between coparceners, for they may agree to present by turns. Co. Litt. 32a, 164b.

HEREDITAMENT, (defined). 5 Conn. 508, 518; 28 Barb. (N. Y.) 336, 338; 3 Kent Com. 401; 1 Chit. Gen. Pr. 153.

— (in a statute). 4 Ad. & E. 805.

HEREDITAMENTS, (distinguished from "tenements"). 8 T. R. 503.

— (includes what). 5 Wend. (N. Y.) 453.

— (in a lease). Dyer 323a.

— (in a statute). 3 Barn. & Ad. 216.

— (in a will). 1 Bos. & P. 558, 562; 2 Id. 247, 251; 11 Mod. 91, 103; 3 T. R. 356; 5 Id. 563; 1 Chit. Gen. Pr. 250.

HEREDITAMENTS, OTHER REAL, (in a statute). 4 Rawle (Pa.) 361.

HEREDITARY.—That which may be inherited.

HEREDITARY RIGHT TO THE CROWN.—The crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, in a course peculiar to itself, yet subject to limitation by parliament; but, notwithstanding such limitation, the crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited. 1 Bl. Com. c. 3.

HEREFARE.—A military expedition; a going to war.—Cowell.

HEREGEAT.—A heriot (*q. v.*)

HEREGELD.—A tribute or tax levied for the maintenance of an army.—Cowell.

HEREINAFTER, (as meaning "herein"). 1 Sim. 173.

HEREINBEFORE, (in a statute). Wilberf. Stat. L. 187.

HERFINBEFORE CONTAINED, (in railway act). L. R. 3 Ch. 297.

HERELLUS.—Certain little fish, probably minnows.—Cowell.

HERMITORIUM.—A place of retirement for hermits. Mon. Ang. tom. 3, p. 18.

HEREMONES, or HERETEAMS.—Followers of an army.

HERENACH.—An arch-deacon.—Cowell.

HERES.—See **HÆRES**.

HERESLITA, HERESSA, or HERESSIZ.—A hired soldier who departs without license. 4 Inst. 128.

HERESY.—An ecclesiastical offence, consisting in the holding of a false opinion repugnant to some point of doctrine clearly revealed in scripture, and either absolutely essential to the Christian faith, or at least of most high importance. (Phillim. Ecc. L. 1092.) It was formerly punishable by death, but the writ *de hæretico comburendo* was abolished by Stat. 29 Car. 2 c. 9, and it is now punishable in England only by excommunication or other censure (*q. v.*) (Id. 1095); the maximum punishment is consequently six months' imprisonment. Stat. 53 Geo. III. c. 127; Steph. Cr. Dig. 98. See **EXCOMMUNICATION**.

HERETOCH.—A general, leader, or commander; also, a baron of the realm.—*Du Fresne*.

HERETOFORE, (defined). 40 Conn. 156.

— (in a grant). Dyer 362a.

— (in a statute). 5 Vr. (N. J.) 377; 2 Zab. (N. J.) 365; 13 N. Y. 378, 427, 458.

HERETOFORE BEEN CONSULTED OR EMPLOYED, (in a statute). 26 Mich. 342.

HERETUM.—A court or yard.—*Jacob*.

HERGE.—In Saxon law, offenders who joined in a body of more than thirty-five to commit depredations.

HERIGALDS.—A sort of garment.—Cowell.

HERIOT.—**NORMAN-FRENCH:** *heriet* (Britt. 178a), late **LATIN:** *heriotum*, from Anglo-Saxon: *heregeata*, *heregeatve*, an implement of warfare, because the lord on the death of his tenant was entitled to a certain number of the tenant's horses and arms, varying according to his military rank (Cnut's Laws, II. § 70), or, in the case of a villein, to his best beast. (William I.'s Laws, 20. Compare the German *Besthaupt*, Grimm's R. A. 364.) Originally, heriot and relief (*q. v.*) were spoken of as synonymous, but after the Conquest, "relief" became appropriated to free tenants, and "heriot," to villeins. (Britt. 178a.)

Heriots are of three kinds: Heriot service; suit heriot; and heriot custom.

§ 1. **Heriot service** can only exist as incident to a freehold tenure created before the Statute of *Quia Emptores*. It consists in the right of the lord to the best beast of a tenant dying seized of an estate of inheritance, and is recoverable by seizure or distress. Hence it is said to lie both in *prender* and in *render*. See those titles. *Elt. Copyh.* 179 *et seq.*; *Wms. Seis.* 203;

Scriv. Copyh. 369; 2 Watk. Copyh. 98; Co. Copyh. § 24; Kit. 265.

§ 2 **Suit heriot** is the right to some chattel of a deceased tenant, reserved on a grant or lease of freehold lands made in modern times. It is not confined to the best beast or to the case of a tenant dying seised of an estate of inheritance. A suit heriot being a species of rent, the lord must either distrain or bring an action for it, and cannot seize it. Scriv. Copyh. 372; Elt. Copyh. c. 1.

§ 3. **Heriot custom** is usually found in copyholds, though it also occurs in freeholds held of a manor in which the freeholders are subject to a set of customary rules. It is not recoverable by distress except by special custom, and is in other respects entirely regulated by local custom. Thus, it may be confined to the second best beast, or to animals of a particular kind, or to "dead goods." A heriot custom may also be due on alienation as well as on death. Elt. Copyh. c. 1. See **MORTUARY**; **SERVICE**.

HERISCHILD.—Military service, or knight's fee.—*Cowell*.

HERISCHULDA.—A fine for failure to obey a proclamation of warfare.—*Skene de verb Signif.*

HERISCINDIUM.—A division of household goods.—*Blount*.

HERISLIT.—Laying down of arms.—*Blount*. Desertion from the army.—*Spel. Gloss.*

HERISTALL.—A castle.—*Spel. Gloss.*

HERITABLE BOND.—In the Scotch law, a bond for money, joined with a conveyance of land or heritage, to be held by a creditor as security for his debt.—*Bell Dict.*

HERITABLE JURISDICTION.—Grants of criminal jurisdiction, anciently bestowed on great families in Scotland, with a view to the more easy administration of justice. Abolished by 20 Geo. II. c. 43.—*Bell Dict.*

HERITABLE RIGHTS.—In the Scotch law, all rights to land, or whatever is connected with land, as mills, fishings, tithes, &c.—*Bell Dict.*

HERITAGE.—In the Scotch law, land, and all property connected therewith; real estate, as distinguished from movables, or personal property.—*Bell Dict.*

HERITOR.—In the Scotch law, a landholder in a parish.

HERMAPHRODITE.—A person of doubtful sex, or who, by reason of malformation, possesses the sexual characteristics (more or less perfectly developed) of both sexes.

Hermaphroditus tam masculo quam femina comparatur secundum præ-

valentiam sexus incalescentis (Co. Litt. 8): An hermaphrodite is to be considered male or female, according to the predominancy of the prevailing sex.

HERMENEUTICS.—The art of interpretation and construction of [legal] writings.

HERMER.—A great lord.—*Jacob*.

HERMITORIUM.—The chapel or place of prayer belonging to a hermitage.

HERMOGENIAN CODE.—See **CODEx GREGORIANUS**, &c.

HERNESCUS.—A heron.—*Cowell*.

HERNESIUM, or **HERNASIUM**. Household goods; implements of trade or husbandry; the rigging or tackle of a ship.—*Cowell*.

HEROUDES.—Heralds.—*Du Cange*.

HERPEX.—A harrow.—*Spel. Gloss.*

HERPICATIO.—A day's work with a harrow.—*Spel. Gloss.*

HERRING SILVER.—A composition in money for the custom of supplying herrings for the provision of a religious house.

HERUS.—A master.

HESIA.—An easement.—*Du Cange*.

HESTA, or **HESTHA**.—A little loaf of bread.

HESTCORN.—Corn vowed or devoted to religious use.—*Cowell*.

HETÆRARCHA.—The head of a religious house; the head of a college; the warden of a corporation.

HEUVELBORGH.—A surety for debt.—*Du Fresne*.

HEYBOTE.—See **ESTOVERS**.

HEYLODE.—A customary burden laid upon inferior tenants for mending or repairing the heys or hedges.—*Cowell*.

HEYMECTUS.—A hay-net; a net for catching conies.—*Cowell*.

HIBERNAGIUM.—The season for sowing winter corn.—*Cowell*.

HIDAGE.—An extraordinary tax formerly payable to the crown for every hide of land. This taxation was levied not in money, but provision of armor, &c.—*Cowell*.

HIDALGO.—In the Spanish law, a person of noble lineage.

HIDE, and GAIN.—Arable land. Co. Litt. 856.

HIDE OF LAND.—The same as a ploughland or plowland (*q. v.*) Co. Litt. 69 a.

HIDEL.—A place of protection or sanctuary.—*Cowell.*

HIDES, (in marine insurance policy). 7 Cow. (N. Y.) 202.

HIDGILD, or HIDEGILD.—A sum of money paid by a villein or servant to save himself from a whipping. Fleta l. 1, c. 47, § 20.

HIERARCHY.—Direction in religious concerns and things sacred. Of whatever denomination may be the persons who take the lead in conducting religious rites, whether they be styled presbyters, elders, ministers, priests, or bishops, they virtually, and according to the true and real meaning of the term, constitute a hierarchy. Hierarchy subsists as much among the chief ministers in the Church of Geneva or of Scotland, as in the Church of Rome or of England.—*Encycl. Lond.*

HIERLOOM.—*See* HEIRLOOMS.

HIGH BAILIFF.—An officer attached to an English county court. His duties are to attend the court when sitting; to serve summonses; and to execute orders, warrants, writs, &c. (Stat. 9 and 10 Vict. c. 95, § 33; Poll. C. C. Pr. 16.) He also has similar duties under the bankruptcy jurisdiction of the county courts. Bankruptcy Rules, 1870, 58.

HIGH COMMISSION COURT.—A court established by 1 Eliz. c. 1. It was instituted to vindicate the dignity and peace of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. The powers of this tribunal were directed to tyrannical and unconstitutional purposes. It was therefore abolished by 16 Car. I. c. 11. 5 Reeves Hist. Eng. Law 215.

HIGH CONSTABLE.—*See* CONSTABLES, § 1.

HIGH CONSTABLE OF ENGLAND, LORD.—His office has been disused (except only upon great and solemn occasions, as the coronation, or the like,) since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VII.

HIGH COURT OF ADMIRALTY.—An English court of maritime jurisdiction, anciently styled the "Court of the Lord High Admiral." (*See* ADMIRAL, § 1.) It had two jurisdictions, one as an instance court, in which originally not only civil but also criminal suits

of a maritime nature were decided, and the other as a prize court. The same judge presided over both courts, but by virtue of separate commissions. Wms. & B. Adm. 1. As to the matters usually falling within the cognizance of the Instance Court, *see* ADMIRALTY, § 1; as to the jurisdiction of the Prize Court, *see* CAPTURE; PRIZE COURT. By the Judicature Acts, 1873–5, the jurisdiction of the Admiralty Court was transferred to the Probate, Divorce, and Admiralty Division of the High Court (*q. v.*)

HIGH COURT OF CHANCERY.—*See* CHANCERY, § 2.

HIGH COURT OF JUSTICE.—That branch of the English Supreme Court of Judicature (*q. v.*) which exercises (1) the original jurisdiction formerly exercised by the Court of Chancery, the Courts of Queen's Bench, Common Pleas and Exchequer, the Courts of Probate, Divorce and Admiralty, the Court of Common Pleas at Lancaster, the Court of Pleas at Durham, and the courts of the judges or commissioners of assize, and (2) the appellate jurisdiction of such of those courts as heard appeals from inferior courts. Judicature Act, 1873, § 16. *Infra*, § 5.

§ 2. It is a superior court of record, and was originally composed of the lord chancellor (who is the president but never sits as a judge in the High Court), the lord chief justice of England, the master of the rolls, the lord chief justice of the Common Pleas, the lord chief baron of the Exchequer, the three vice chancellors of the former Court of Chancery, such of the puisne judges of the old common law courts as have not been transferred to the Court of Appeal, the judge of the former Probate and Divorce Court, the judge of the former Admiralty Court, and the "judges of Her Majesty's High Court of Justice," who have been appointed since the Judicature Act came into operation. *Id.* § 5; Act of 1875, § 3; Appellate Jurisdiction Act, 1876, §§ 15, 18; Judicature Act, 1877; *Id.*, 1881.

§ 3. **Divisions of the High Court.**—The High Court was also originally divided into five temporary divisions, corresponding to, and composed of the same judges as, the old courts which it replaced, viz.: The Chancery Division; the Queen's Bench Division; the Common Pleas Division; the Exchequer Division; and the Probate, Divorce and Admiralty Division. (Judicature Act, 1873, § 31.) And it was enacted that most of the business which before the act was within the exclusive jurisdiction of any one of the old courts should be assigned to the corresponding Division of the High Court, *i. e.* the action or matter was to be commenced in that Division. Thus, actions for the execution of trusts were to be assigned to the Chancery Division, and proceedings relating to the revenue, to the Exchequer Division. (Judicature Act, 1873, § 34,) provision being made for the transfer of business from one Division or judge to another, when necessary. *Id.* § 36.

§ 4. On the death, in 1880, of the lord chief justice of England, and the lord chief baron of the Exchequer, who were in office when the Judicature Act came into operation, a council of

judges was held, and on the resolution then passed an order in council (which came into effect on the 26th February, 1881,) was made under the 32d section of the Judicature Act, 1873, abolishing the offices of the lord chief justice of the Common Pleas and the lord chief baron, and consolidating the "three common law divisions," i. e. the Queen's Bench, Common Pleas and Exchequer Divisions, into one division called the "Queen's Bench Division," under the presidency of a lord chief justice. (See COUNCIL OF JUDGES; QUEEN'S BENCH DIVISION.) The High Court, therefore, now consists of three divisions, namely: The Chancery Division; the Queen's Bench Division; and the Probate, Divorce and Admiralty Division. The rules as to the distribution of business above mentioned have not been altered, except to this extent.

§ 5. **Divisional Courts.**—Under the practice of the old common law courts, almost every question of law arising in an action, such as demurrers, motions for new trials, for leave to enter verdicts, &c., had to be heard by the full court, or court sitting in banc, composed of at least three judges. To allow of the continuance of this practice, at all events for some time, the Judicature Act provided for the sittings of divisional courts of the High Court, (not to be confounded with the Divisions of the High Court, *supra*, §§ 3, 4,) to be composed of two or three (but no more) judges of the High Court, including, if practicable, one or more judges of the Division to which the business to be heard was assigned. (*Id.* §§ 40, 41.) In the Chancery, Probate, Divorce and Admiralty Courts, on the other hand, all the business was transacted before a single judge, each cause or matter in Chancery business being marked for a judge by name, who heard all applications and questions in it from its commencement to its end. This practice is continued in the divisions corresponding to those courts. (*Id.* § 42.) With a view of extending this practice to the common law divisions of the High Court, the Appellate Jurisdiction Act, 1876, provided, that in future every action and proceeding in the High Court, and all business arising out of the same, should, so far as is practicable and convenient, be heard and disposed of before a single judge, and that all proceedings in an action subsequent to the trial or hearing, should be taken before the judge before whom the trial or hearing took place. (*Id.* § 17.) The Rules of Court made under this section (Rules of December, 1876,) direct that appeals from chambers, and from county courts, crown and revenue business, and

some other matters, shall continue to be held by divisional courts.

§ 6. **An appeal** lies to the Court of Appeal (*q. v.*) from all judgments and orders of the High Court in its ordinary jurisdiction.

HIGH COURT OF ERRORS AND APPEALS.—The court of last resort in the State of Mississippi.

HIGH COURT OF JUSTICIARY.—*See* COURT OF JUSTICIARY

HIGH COURT OF PARLIAMENT.—*See* PARLIAMENT.

HIGH CRIMES AND MISDEMEANORS, (defined). 6 Conn. 417.

HIGH MISDEMEANORS.—*See* MISPRISON.

HIGH SCHOOL, (defined). 123 Mass. 304, 306.

HIGH SEAS.—The high seas, in the English view, include the whole of the seas or open salt water on the globe, beyond the distance of three miles from the coast of any country.* In the American view, the high seas begin at low-water mark, except in small harbors and roadsteads enclosed within the *faucēs terræ*. *See* De Lovio v. Boit, 2 Gall. (U. S.) 428; 1 Kent Com. 367, and *n.*

§ 2. The high seas are common to all nations, and no part of them can become the property of any one State. They are, therefore, open to the navigation, fishery and commerce of all the world, and no nation has the right to exercise civil or criminal jurisdiction over the ships of other nations while passing over the high seas. (Couls. & F. Waters 2 *et seq.*) The courts of a country may, however, exercise jurisdiction over foreign ships in respect of injuries committed by them on the high seas, if they subsequently come within the territorial waters of that country; and

* Perhaps it should be added, that the country must be one recognizing the obligations of international law, as the three-mile limit is an arbitrary creation of international law. In the case of *Reg. v. Keyn*, 2 Ex. D. 63, it was decided by a majority of seven against six judges, that the English criminal courts had no jurisdiction to convict a foreigner for an offence committed on the open sea within a distance of three miles from the English coast. Two of the majority were also of opinion that the English parliament had no power to legislate with reference to the

portion of the open sea within three miles, so as to give the English courts jurisdiction over offences committed there. The rest of the majority, however, considered that the English parliament had this power. The decision, therefore, merely went on the ground that legislation was necessary to give the English courts jurisdiction, and that no statute having that effect had been passed. In accordance with this view, the Territorial Waters Act, 1878, was shortly afterwards passed.

the English courts have, in fact, jurisdiction in such cases. (Merchant Shipping Act, 1854, § 527.) As regards the right of fishing on the high seas, where a particular locality is habitually frequented by fishermen of different countries, and a custom is established regulating the mode and time of fishing, and such matters, the custom is binding on all those who frequent the locality. *Couls. & F. Waters* 5, 342.

§ 3. The bed of the high sea appears to follow the same general rule, that it is common to all nations. There is, however, this difference, that it is capable of permanent occupation, and it would consequently appear that if any State keeps uninterrupted and exclusive possession of a portion of the bed of the high seas, for a certain length of time, the State thereby acquires a right to it as against all others, by analogy to the doctrine of possession. *Id.* 2. See **KING'S CHAMBERS**; **PIRACY**.

HIGH SEAS, (defined). 3 *Blatchf.* (U. S.) 435; 1 *Gall.* (U. S.) 624; 5 *Mas.* (U. S.) 290; 5 *Wheat.* (U. S.) 76, 94.

—— (what are). 2 *Gall.* (U. S.) 398, 428; 1 *Mas.* (U. S.) 147; 2 *Paine* (U. S.) 601; 5 *Wheat.* (U. S.) 184.

—— (what are not). 1 *Bro.* (U. S.) *Adm.* 156; 1 *Mas.* (U. S.) 152; 4 *Mas.* (U. S.) 307.

—— (in a statute). 5 *Mas.* (U. S.) 290; 5 *Wheat.* (U. S.) 94.

—— (when a vessel is on). 4 *Blatchf.* (U. S.) 420.

HIGH TREASON.—Treason against the king, as distinguished from petit treason, which was treason by a servant against his master, a wife against her husband, &c. Since petit treason was abolished by 9 *Geo. IV. c. 31*, § 2, the correlative term "high" is not now usually retained, when speaking of this the highest civil crime. It is merely denominated "treason." See **TREASON**.

HIGH-WATER MARK.—That part of the shore to which the waves of the sea ordinarily reach at high, or flood tide. The term is also occasionally applied to the highest point on the shore of non-tidal streams in which fresh water ponds and lakes are constructed by dams, to which the dams can ordinarily raise the water.

HIGH-WATER MARK, (defined). 18 *Cal.* 11. — (grant of land below). 3 *Mass.* 352, 360.

HIGH-WATER MARK OF THE DAM OR POND, (in a conveyance). 113 *Mass.* 238.

HIGH WOOD.—Timber

HIGHER AND LOWER SCALE.—

In the practice of the English Supreme Court of Judicature there are two scales regulating the fees of the court and the fees which solicitors are entitled to charge. The lower scale applies (unless the court otherwise orders) to the following cases: All causes and matters assigned by the Judicature Acts to the Queen's Bench, or the Probate, Divorce and Admiralty Divisions; all actions of debt, contract, or tort; and in almost all causes and matters assigned by the acts to the Chancery Division in which the amount in litigation is under £1000. The higher scale applies in all other causes and matters, and also, in actions falling under one of the above classes, but in which the principal relief sought to be obtained is an injunction. See *Chapman v. M. R. Co.*, 5 *Q. B. D.* 167, 431; *Duke of Norfolk v. Arbuthnot*, 6 *Q. B. D.* 190; *Dan. Ch. Pr.* 1310.

HIGHEST BIDDER, (in conditions of an auction sale). 2 *Car. & P.* 208.

—— (in a statute). 48 *Me.* 377

HIGHEST OFFER, (what is not). 3 *Meriv.* 472.

HIGHNESS.—A title of honor given to princes. The kings of England, before the time of James I., were not usually saluted with the title of "Majesty," but with that of "Highness." The children of crowned heads generally receive the style of "Highness."—*Whartm.*

HIGHWAY.—A passage which is open to all the people. Thus, public rivers are in law considered as highways. (2 *Sm. Lead. Cas.* 142.) A highway need not necessarily be a thoroughfare. (*Id.* 141; *Shelf. R. P. Stat.* 62.) The interest of the public in a highway consists solely in the right of passage over it. Thus, a highway over land (which is what is usually meant by a highway) gives the right of walking, driving and riding. (*Co. Litt.* 560.) The soil and freehold over which that right of way is exercised may be, and generally is, vested in a private owner, who may maintain an action against persons who infringe his rights therein, as, for instance, by permitting cattle to depasture there. *Id.*, citing *Reg. v. Pratt*, 4 *El. & B.* 860.

§ 2. A way ceases to be a highway when all access to it has been legally stopped up, (*Bailey v. Jamieson*, 1 *C. P. D.* 329.) and the right to the surface then reverts to the owner of the soil. *Rolls v. St. George the Martyr*, 14 *Ch. D.* 785.

§ 3. The unlawful stoppage or obstruction of a highway is a public nuisance. *Shelf. R. P. Stat.* 67.

§ 4. **Highway Acts**.—The English Highway Acts are various acts from 5 and 6 *Will.*

IV. c. 50, to 25 and 26 Vict. c. 61; 27 and 28 Vict. c. 101; and 41 and 42 Vict. c. 77, relating to highways on land. They provide for the formation of highway districts and highway boards, and the levying of highway rates for the management and repair of highways. They also contain provisions for stopping up and diverting highways by order of two justices. (Chit. Stat. tit. Highway; Stone Just. 322; 2 Sm. Lead. Cas. 152 *et seq.*; 3 Steph. Com. 128.) The Turnpike Acts also contain provisions relating to highways coming within their scope. For the statutory regulation of highways in the United States, the statute books of the several States should be consulted. See AD QUOD DAMNUM; DEDICATION; NAVIGATION; NUISANCE; WAY.

HIGHWAY, (defined). 34 Me. 9; 10 Metc. (Mass.) 465, 469; 7 Mich. 432; 34 Id. 212; 4 Zab. (N. J.) 740; 1 Macq. H. L. Cas. 455.

— (what is). 7 Ind. 9; 21 Id. 277; 13 Pick. (Mass.) 94; 41 Mich. 420; 3 Paige (N. Y.) 213; 3 Wend. (N. Y.) 146; 7 Id. 145; 1 McCord (S. C.) 404; 1 Campb. 260; 3 Com. Dig. 29.

— (what is not). 1 Cranch (U. S.) C. C. 444; 30 Ala. 529; 7 Pick. (Mass.) 68; Phil. (N. C.) L. 140, 143.

— (how established). 2 Mass. 489; 23 N. H. 327; South. (N. J.) 482.

— (how pleaded). 3 T. R. 265.

— (distinguished from "town-way"). 59 Me. 450; 108 Mass. 68.

— (includes "town-way"). 6 Pick. (Mass.) 59; 24 Id. 98.

— (includes all public ways). 8 Wheel. Am. C. L. 383.

— (as synonymous with "road"). 27 N. Y. 269.

— (as synonymous with "street"). 4 Serg. & R. (Pa.) 106.

— (easement of public in). 1 Root (Conn.) 118; 6 Mass. 454; 13 Id. 258; 16 Id. 33; 1 Cow. (N. Y.) 240; 2 Johns. (N. Y.) 357; 12 Wend. (N. Y.) 98.

— (not convertible with "railway"). 26 Conn. 256.

— (in a deed, as a boundary). 31 Conn. 167.

— (in a statute). 10 R. 79.

— (indictment for not repairing). 2 Cox C. C. 184; 2 Saund. 158.

— (indictment for obstructing). 1 Car. & P. 527.

HIGHWAY, KING'S, (defined). 3 Yeates (Pa.) 362, 371.

HIGHWAY, PUBLIC, (what is). 47 Ill. 487; 1 Sax. (N. J.) 369, 382; 3 N. H. 321; 68 N. C. 297; Wright (Ohio) 749; 2 Barn. & Ald. 646.

— (what is not). 4 Cranch (U. S.) C. C. 270; 35 N. H. 574.

HIGHWAY ROBBERY.—See ROBBERY.

HIGHWAYMAN.—A term applied to one who robbed on the highway, when highway robbery was a distinct offence.

HIGLER.—A person who carries from door to door and sells, by retail, provisions, &c.

HIIS TESTIBUS.—These being witnesses. The attestation clause in old deeds and charters was thus written, the names of the witnesses following, the clause concluding with the words, *et alius ad hanc rem convocatis*, and others for this purpose assembled.

HIKENILDE STREET.—One of the four Roman roads of Britain, leading from St. David's to Tynemouth.

HILARY TERM.—See SITTINGS; TERM.

HINDENI HOMINES.—A society of men. The Saxons ranked men into three classes, and valued them, as to satisfaction for injuries, &c., according to their class. The highest class were valued at 1200s., and were called *twelfhindmen*; the middle class at 600s., and called *sexhindmen*; the lowest at 200s., called *tywhindmen*. Their wives were termed *hindas*. Brompt. Leg. Alfred, c. xii.

HINDER, (not synonymous with "delay"). 68 Mo. 435.

HINE, or HIND.—A husbandry servant.

HINE FARE.—The loss or departure of a servant from his master.—*Domesd.*

HINEGELD.—See HIDGILD.

HINDU LAW.—The system of native law, prevailing among the Gentoos, and administered by the government of British India.—*Bouvier.*

HIPOTECA.—In the Spanish law, a real property mortgage. White New Recop. b. 2, tit. 7.

HIRCISCUNDA.—The division of an inheritance among heirs.—*Cowell.*

HIRE.—Compensation for the use of a thing, or for labor or services. See BAILEE, § 2; HIRING.

HIRE, (defined). 11 N. Y. 593, 605.

HIRE AND TO FREIGHT TAKEN, (in a charter-party). 2 Brod. & B. 410, 428.

HIRE TO, (equivalent to "let to hire"). 6 Taunt. 389.

HIREMAN.—A subject.—*Du Cange.*

HIRER.—One who hires a thing, or the labor or services of another person.

HIRER, (of goods, rights and liabilities of). 2 Wheel. Am. C. L. 139; Ld. Raym. 916.

HIRING.—LATIN: *locatio, conductio.*

§ 1. A bailment for a reward or compensation. It is divisible into four sorts: (1) The hiring of a thing for use (*locatio rei*); (2) the hiring of work and labor (*locatio operis faciendi*); (3) the hiring of care and

services to be performed or bestowed on the thing delivered (*locatio custodiæ*); (4) the hiring of the carriage of goods (*locatio operis mercium vehendarum*) from one place to another. The last three are but subdivisions of the general head of hire of labor and services.

§ 2. Several ingredients are of the essence of the contract of bailment for hire. (1) There should be a thing in *esse*, which may be the subject of the contract; (2) it should be a thing capable of being let; (3) the bailee should have a right to use, enjoy and possess it during the period for which it is let; (4) there should be a price for the hire; and (5) there should be a contract creating a legal obligation between the parties.

§ 3. To make a binding contract, it is necessary: (1) That the bailment should not be prohibited by law; (2) that it should be between persons competent to contract; and (3) that there should be a free and voluntary consent between the parties.

The rights, duties and obligations of the parties resulting from the contract of bailment for hire may be thus stated—

§ 4. **Hire of things.**—The letting to hire implies an obligation to deliver the thing to the hirer; to refrain from every obstruction to the use of it by the hirer during the period of the bailment; to do no act that shall deprive the hirer of the thing; to warrant the title and right of possession to the hirer, in order to enable him to use the thing, or to perform the service; to keep the thing in suitable order and repair for the purposes of the bailment; and, finally, to warrant the thing free from any fault inconsistent with the proper use or enjoyment of it. It is the duty of the person letting to hire, according to the Roman law, to disclose the faults of the thing hired, and practice no artful concealment; to charge only a reasonable price therefor; and to indemnify the hirer for all expenses which are properly payable by the person letting. The rights of the hirer are, that he acquires the right of possession only of the thing for the particular period or purpose stipulated (but he acquires no property in it); and that he also acquires the exclusive

right to the use of the thing during the time of the bailment. His duties are to put the thing to no other use than that for which it is hired; to use it well; to take care of it; to restore it at the time appointed; to pay the price or hire; and, in general, to observe whatever is prescribed by contract, or by law, or by custom. The contract may be dissolved or extinguished in respect to future liabilities in various ways: (1) By the mere efflux of the time, or the accomplishment of the object, for which the thing is hired; (2) by the loss or destruction of the thing by any inevitable casualty; (3) by a voluntary dissolution of the contract by the parties; and (4) by operation of law, as where the hirer becomes proprietor by purchase or otherwise of the thing hired. How far those principles, which are derived altogether from the Roman and foreign laws, are to be deemed satisfactorily established in our jurisprudence, is a matter for consideration, since the common law does not furnish any direct recognition of them. But it may be safely affirmed, that they are so consonant with general justice, and with the nature of the contract, that, in the absence of any controlling authority, they may be used as fit guides to assist our general reasoning.

§ 5. **Hire of labor and services** is divisible into two branches: (1) *Locatio operis faciendi*; and (2) *locatio operis mercium vehendarum*, mentioned as the 2d and 4th divisions of § 1, *supra*. The *locatio operis faciendi* may be subdivided into two kinds: (a) The hire of labor and services, or *locatio operis faciendi*, strictly so called; such are the hire of tailors to make clothes, of jewellers to set gems, and of watchmakers to repair watches; (b) *locatio custodiæ*, (the third division mentioned in § 1, *supra*,) or the receiving of goods on deposit for a reward for the custody thereof, which is properly the hire of care and attention about the goods, as by warehousemen, wharfingers, &c.

§ 6. **In contracts for work** it is of the essence of the contract: (1) That there should be work to be done; (2) that it should be to be done for a price or reward; and (3) that there should be a lawful contract between parties capable and intend

ing to contract. The obligations and duties on the part of the employer, as deduced in the foreign law, are principally these: (1) To pay the price or compensation; (2) to pay for all proper, new, and accessorial materials; (3) to do everything on his part to enable the workman to execute his engagement; (4) to accept the thing when it is finished. If, before the work is finished, the thing perishes by internal defect, by inevitable accident, or by irresistible force, without any default of the workman, then, (1) if the work is independent of any materials or property of the employer, the manufacturer has the risk, and the unfinished work is lost to him; (2) if he is employed in working up the materials, or adding his labor to the property of the employer, the risk is with the owner of the thing with which the labor is incorporated; (3) if the work has been performed in such a way as to afford a defence to the employer against a demand for the price, if the accident had not happened (as if it were defectively or improperly done), the same defence will be equally available to him after the loss. The obligations or duties on the part of the workman or undertaker are thus summed up in the foreign law: To do the work; to do it at the time agreed on; to do it well; to employ the materials furnished by the employer in a proper manner; and, lastly, to exercise a proper degree of care and diligence about the work.

§ 7. **The hiring of care and attention.**—To this class belong agistors of cattle, warehousemen, forwarding merchants and wharfingers. They are bound to use ordinary diligence, and of course are responsible for losses by ordinary negligence.

§ 8. **The locatio operis mercium vehendarum,** or the carriage of goods for hire. In respect to contracts of this sort entered into by private persons, who do not exercise the business of common carriers, there does not seem to be any material distinction, varying the rights, obligations, and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence, and to a reasonable exercise of skill; and of course he is not responsible

for any losses not occasioned by the ordinary negligence of himself or of his servants. The exceptions to this general rule are postmasters, innkeepers and common carriers. These are under peculiar regulations consonant with public policy. (*See* those titles, respectively. *Story Bailm. c. vi.*)—*Wharton*.

HIRING, (defined). 19 *Johns. (N. Y.)* 44.

— (what is). 2 *Barn. & C.* 715.

— (what is not). 2 *Watts (Pa.)* 342.

— (of laborers, general practice in). 12 *Johns. (N. Y.)* 165.

HIRING YEARLY, (what is). 4 *Bing.* 309.

HIRST, or HURST.—A wood.—*Domesd.*; *Co. Litt.* 4b.

HIS, (in a policy of insurance). 122 *Mass.* 194.

HIS DWELLING HOUSE, (in a policy of insurance). 16 *Wend. (N. Y.)* 385.

HIS ESTATE, (in act concerning paupers). 13 *Mass.* 463.

HIS HALF PART, (in a devise). 11 *East* 160.

HIS HAND AND SEAL, (in a statute). 9 *Wheat. (U. S.)* 707.

HIS HEIRS MALES LAWFULLY ENGENDERED (in a will). 1 *Cro.* 478.

HIS HOUSE, (in a will). 6 *Watts (Pa.)* 101.

HIS NATURAL LIFE, (in a lease). 5 *Barn. & Ad.* 639; 2 *Nev. & M.* 838.

HIWISC.—A hide of land (*q. v.*)

HLAF ÆTA.—A servant fed at his master's cost.

HLAFORD.—A great lord who had vassals under him, and to whom also landless men might commend themselves. He was answerable to produce them when wanted for the purposes of justice.

HLAFORDSOCNA.—A lord's protection.—*Du Cange*.

HLAFORDSWICE.—Betraying one's lord; treason.

HLASOCNA.—The benefit of the law.—*Du Cange*.

HLOTHBOTE.—A mulct set on one who commits homicide in a riot or hlothe, or who is present at an unlawful assembly.

HLOTHE.—An unlawful assembly from eight to thirty-five inclusive.—*Cowell*.

HOASTMEN.—An ancient guild or fraternity in Newcastle-upon-Tyne, engaged in selling or shipping coal. *Stat. 21 Jac. I. c. 3, § 12.*

HOBBS.—Thomas Hobbes was born at Malmesbury in 1588, and died in 1679. He wrote *De Cive*, *The Leviathan*, and

numerous other works, in which theoretical questions of law and government are discussed.

HOBBLERS, or HOBIERS.—Light horsemen or bowmen; also, certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or such like peril, towards the seaside.—*Camd. Brit.*

HOCCUS SALTIS.—A hoke, hole, or lesser pit of salt.—*Cowell.*

HOCKETTOR, or HOCQUETEUR.—A knight of the post; a decayed man; a basket carrier.—*Cowell.*

HOCK-TUESDAY-MONEY.—A duty given to the landlord, that his tenants and bondmen might solemnize the day on which the English conquered the Danes, being the second Tuesday after Easter-week.—*Cowell.*

Hog, (includes "sow"). 2 So. Car. 21.
—— (in a contract). 5 Ind. 122; 7 *Id.* 195.

HOGA, HOGIUM, or HOCH.—A mountain or hill.—*Du Cange.*

HOGASTER.—A little hog; a young sheep.—*Cowell.*

HOGGACIUS—HOGGASTER.—A sheep of the second year.—*Cowell.*

HOGGUS, or HOGIETUS.—A hog or swine.—*Cowell.*

HOGSHEAD.—A measure of capacity containing the fourth part of a tun, or sixty-three gallons.—*Cowell.* A large cask, of indefinite contents, but usually containing from one hundred to one hundred and forty gallons.—*Webster.*

HOLD.—(1) To have as tenant. (2) To announce a legal opinion; to adjudge or decree.

HOLD A LIFE INTEREST, (in a deed). 7 W. Va. 289.

HOLD AND ENJOY, (in an agreement). 2 T. R. 739; 5 *Id.* 163.

—— (in a lease). 6 Bing. 206, 212.

HOLD AND OCCUPY, (covenant that lessee shall). 6 Mass. 246.

HOLD, I, (in a will). 3 Watts (Pa.) 333, 338.

HOLD LANDS, (power to, of corporations). 14 Pet. (U. S.) 122.

HOLD PLEAS.—To hear causes. See 3 Bl. Com. 35, 298.

HOLD REAL ESTATE, (power of bank to). 1 Doug. (Mich.) 401; 3 Rand. (Va.) 136.

HOLDER.—A payee or indorsee in possession of a bill of exchange, or promissory note.

HOLDER, (of a promissory note, who is). 6 How. (U. S.) 248.

HOLDING.—

§ 1. A holding, in English law, is a piece of land held under a lease or similar tenancy for agricultural, pastoral or similar purposes. Under the Agricultural Holdings (England) Act, 1875, "holding" includes all land held by the same tenant of the same landlord, for the same term, under the same contract of tenancy. 38 and 39 Vict. c. 92, § 4.

§ 2. A term used in the Scotch law, to signify the tenure or nature of the right given by the superior to the vassal.—*Bell Dict.*

HOLDING, (equivalent to "owning," or "having title to"). 17 Ind. 6.

—— (of stock, to constitute a voter under a charter). 4 Cow. (N. Y.) 380.

HOLDING OVER is where a tenant continues in possession of land after the determination of his tenancy. In ordinary cases, the effect of holding over is either to make the tenant liable to an action for use and occupation (*q. v.*) or to continue the tenancy against his wish.

§ 2. **Double damages.**—By Stat. 4 Geo. II. c. 28, where a tenant for term of life or years wilfully holds over the land after the determination of the term, and after demand and notice in writing by the landlord for the delivery of the possession, the tenant is liable to pay damages at double the yearly value of the land.

§ 3. **Double rent.**—By Stat. 11 Geo. II. c. 19, § 18, a tenant who holds over after giving notice to quit, is liable to pay double rent for the time he continues in possession. Woodf. L. & T. 697 *et seq.*

§ 4. In American law, the remedy for holding over is by action of ejectment, or, in many of the States, by a summary statutory proceeding by the landlord to regain possession of the leased premises. See SUMMARY PROCEEDINGS.

HOLDING OVER, (officers). 6 Wend. (N. Y.) 422.

HOLDING SHARES, (in companies act). 3 Q. B. D. 442.

HOLDS, (in a contract). 10 Barn. & C. 249.

HOLIDAY, or HOLY DAY.—An anniversary feast; a religious festival; a day of exemption from labor. In America, holidays are days upon which, by statute or local usage, no labor need be done, and upon which civil process, notices, &c., cannot be legally served. See DIES NON.

HOLIDAY, (courts have no authority to hear causes on). 38 Wis. 673.

—— (docketing judgment on). 14 Bankr. Reg. 388.

HOLIDAY, (in indenture of apprenticeship). 4 Cl. & F. 234.
 — (note falling due on). 12 Mass. 89;
 3 Pick. (Mass.) 414; 4 Wend. (N. Y.) 566; 2
 Campb. 602; Ld. Raym. 743.

HOLM.—An isle, or fenny ground; a river island; also, a hill or cliff.—Co. Litt. 5 a.

HOLOGRAPH.—GREEK: *ὁλος*, all, and *γραφω*, to write.

A deed or writing, written entirely by the grantor himself, which, on account of the difficulty with which the forgery of such a document can be accomplished, is held by the Scotch law valid without witnesses. (See *Bell Dict.*) A will written entirely by the testator. See **OLOGRAPH**.

HOLT.—A wood. Co. Litt. 4 b.

HOLY ORDERS.—Those who have been admitted and ordained deacons are in holy orders. The ordination must take place according to the form prescribed in the Book of Common Prayer. 2 Steph. Com. (7 edit.) 660. See **DEACON**.

HOLY ORDERS, (what are). 15 East 577.

HOMAGE.—Homage, in the sense of service, is derived from the Norman-French *homage*, from *home*, a man, because the tenant became the lord's man. (Britt. 174 a.) Homage, in the sense of the suitors at a court baron, is said to be of the same derivation, because the suitors were those who had done homage. (Blount s. v.; Wms. Seis. 36.) This derivation is doubtful.

§ 1. **Freeholders—Copyholders**.—Homage signifies the free tenants of a manor assembled in the court baron. They are sworn to make their presentments with impartiality, and are hence sometimes called the "homage jury." But the attendance of free tenants at the court baron has become so infrequent that the term "homage" is more commonly applied to the copyholders attending at the customary court. The duty of a homage jury is to make presentments of all things done within the manor to the prejudice of the lord or tenants, and to recommend whatever may appear to be advantageous to the lord, and not injurious to the tenants. Elt. Copyh. 268; see, also, *Warrick v. Queen's College*, L. R. 6 Ch. at p. 727. See **PRESENTMENT**.

§ 2. **Service of**.—Formerly, homage signified "a most honorable and humble service of reverence," which every free tenant for an estate in fee-simple or fee-tail was bound to perform to his feudal lord. It was so called because in doing homage in ordinary cases the tenant said to his lord: "I become your man [Norman-French, *home*] of life and limb." (Litt. § 85, where the ceremony is described; Wms. Seis. 9. As to the form when the tenant was a man of religion, or a woman, see Litt. § 86 *et seq.* As to the cases where it was due, see Litt. § 148 *et seq.*) Homage created an obligation of assistance by the tenant to his lord, and of protection by the lord to his tenant. Co. Litt. 64 a.

§ 3. **The different kinds**.—Liege homage was without any saving or exception

of the faith due by the tenant to any one else, as where a tenant did homage to the king. Simple homage, or *homagium non ligeum*, was performed by a subject to a subject, as in ordinary cases, where the tenant promised to be faithful to his lord saving the faith he owed to the king. *Id.* 65 a and n. (3); also Litt. § 89. Hale P. C. 72 also mentions mixed homage, *e. g.* that homage which is due to a prince who is sovereign in relation to his own subjects, and yet owes a subjection to some other prince.

§ 4. **Homage auncestral** (*homagium antecessorium*) is "where a tenant holdeth his land of his lord by homage, and the same tenant and his ancestors, whose heire he is, have holden the same land of the same lord and of his auncestors, whose heire the lord is, time out of memorie of man, by homage, and have done them homage. And this is called 'homage auncestrell,' by reason of the continuance which hath beene by title of prescription in the tenancie in the blood of the tenant, and also in the seignorie in the blood of the lord." (Litt. § 143; see, also, § 152.) The continuance in the blood of the lord was not essential to the tenure, for land might be held of a corporation by homage auncestrel. (Litt. § 146; Co. Litt. 102 b.) The peculiarity of homage auncestrel was, that it imposed on the lord the duty of warranty (*q. v.*) and acquittal (*q. v.*, § 2,) towards his tenant. Litt. §§ 143, 144.

§ 5. Homage was abolished by the act 12 Car. II. c. 24. See **FEALTY**.

HOMAGE ANCESTRAL, or AUNCESTRAL.—See **HOMAGE**, § 4.

HOMAGE JURY.—See **HOMAGE**, § 1.

HOMAGER.—One who does, or is bound to do, homage.—*Cowell*.

HOMAGIO RESPECTUANDO.—See **DE HOMAGIO RESPECTUANDO**.

HOMAGIUM.—Homage (*q. v.*)

HOMAGIUM LIGEUM.—See **HOMAGE**, § 3.

Homagium, non per procuratores nec per literas fieri potuit, sed in propria persona tam domini quam tenentis capi debet et fieri (Co. Litt. 68): Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of lord as the tenant.

HOMAGIUM REDDERE.—To renounce homage. This was when a vassal made a solemn declaration of disowning and defying his lord; for which there was a set form and method prescribed by the feudal laws. Brac. l. 2, c. xxxv. § 35.

HOME.—See **DOMICILE**; **RESIDENCE**.

HOME, (defined). 2 Dev. & B. (N. C.) Eq. 12. — (distinguished from "legal settlement"). 19 Me. 293, 375.

— (what is). Adams (N. H.) 194.

— (what is not). 124 Mass. 132, 147.

HOME, (in a statute). 3 Me. 229; 15 *Id.* 58.

HOME AND MAINTENANCE DURING THE TIME SHE REMAINS UNMARRIED, (in a will). 126 Mass. 433, 436.

HOME OFFICE.—The department of state through which the English sovereign administers most of the internal affairs of the kingdom, especially the police, and communicates with the judicial functionaries.

HOME OR DWELLING PLACE, (of a pauper). 35 Vt. 232.

HOME PORT.—A port in a State in which the owner of a ship resides. (1 Brock. (U. S.) 396, 404.)—*Burrill*.

HOMESOKEN — HOMSOKEN. — See **HAMESOKEN**.

HOMESTALL.—A mansion-house.

HOMESTEAD.—The place where a home or house is situated; the permanent residence of a person who is the head of a family, with the land and outbuildings contiguous to the house.

HOMESTEAD, (defined). 22 Ark. 400; 4 Cal. 23; 33 *Id.* 220; 7 N. H. 241, 245; 36 *Id.* 166; 46 *Id.* 52; 51 *Id.* 253; 23 Tex. 498; 31 *Id.* 677; 39 *Id.* 357; 15 Wis. 635.

—— (what is). 12 Bankr. Reg. 248; 15 Cal. 202; 16 *Id.* 181; 37 *Id.* 176; 18 Ill. 194; 39 *Id.* 446; 14 Iowa 73; 36 *Id.* 394; 12 Kan. 257; 11 Allen (Mass.) 194; 1 Mich. N. P. 210; 45 Miss. 170; 62 Mo. 498; 17 Tex. 582; 18 *Id.* 413; 34 *Id.* 617; 46 Vt. 292.

—— (what is not). 7 Cal. 245; 15 Minn. 116; 24 Tex. 224; 28 Vt. 672; 16 Wis. 114.

—— (abandonment of). 18 Iowa 4.

—— (dedication of). 47 Cal. 627.

—— (occupancy of). 4 Cal. 268; 43 Ill. 169.

—— (in a deed). 7 N. H. 241.

—— (in a will). 14 Iowa 73; 111 Mass. 386; 7 Pick. (Mass.) 191.

—— (in constitution of Kansas). 2 Dill. (U. S.) 339.

—— (in constitution of Florida). 2 Wood (U. S.) 657.

—— (in constitution of North Carolina). 67 N. C. 293; 69 *Id.* 289.

—— (under exemption laws). 22 Ark. 400; 54 Ill. 175; 58 *Id.* 425; 8 Allen (Mass.) 575; 100 Mass. 234; 20 Mich. 79; 46 N. H. 43, 45; 16 Wis. 157.

HOMESTEAD EXEMPTION LAWS.—Laws passed in most of the States allowing a head of a family to designate by public record a house and land as his homestead, and exempting such homestead from execution for general debts. See the statutes of the several States.

HOMESTEAD FARM, (defined). 11 Pick. (Mass.) 347.

—— (in a deed). 16 Gray (Mass.) 146.

—— (includes what). 10 Cush. (Mass.) 158.

HOMESTEAD, RURAL, (consists of what). 33 Tex. 212.

HOMICIDE.—LATIN: *homicidium*, from *homo*, a man, and *occidere*, to kill. Formerly "homicide" meant manslaughter. Co. Litt. 287 b.

§ 1. Homicide is where one human being kills another. Steph. Cr. Dig. 138.

§ 2. **Felonious.**—Homicide is unlawful or felonious: (1) When death is caused by an act done with the intention to cause death or bodily harm, or which is commonly known to be likely to cause death or bodily harm, and when such act has no legal justification or excuse (see **MURDER**); (2) when death is caused by an omission, amounting to culpable negligence, to discharge a duty tending to the preservation of life, whether such omission is or is not accompanied by an intention to cause death or bodily harm (see **MANSLAUGHTER**; **MURDER**); (3) when death is caused accidentally by an unlawful act. Steph. Cr. Dig. 143. See **MANSLAUGHTER**.

§ 3. **Excusable.**—Homicide is excusable when the person by whom it is committed is not altogether free from blame, though it is not of such a kind as to make him criminally responsible. Excusable homicide is either *per infortunium*, by misadventure, as where a person driving a carriage with due care accidentally kills any one (1 Russ. Cr. 844), or homicide *se et sua defendendo*, i. e. in defence of one's self or property upon some sudden affray considered by the law as in some measure blamable. *Id.* See **CHANCE-MEDLEY**.

§ 4. **Justifiable.**—Homicide is justifiable where no blame whatever attaches to the person killing; as in the case of the execution of a malefactor by legal warrant, or where a constable or other officer in the execution of his duty, in either a civil or criminal case, kills a person who assaults or resists him, or where one person kills another in defending himself or his property against an attempt to commit a felony with force, e. g. murder, robbery. (*Id.* 848 *et seq.* See, also, the curious case of one person pushing another off a plank at sea in order to save himself; Bac. El. Com. L. c. 5, cited 4 B. Com. 186.) Formerly, a

person who committed excusable homicide was liable to be tried and punished, but this liability has been abolished (Archb. Cr. Pl. 656), so that the distinction between excusable and justifiable homicide no longer exists.

HOMICIDE, (defined). 1 Park. (N. Y.) Cr. 182, 186; 10 Tex. App. 255.

HOMICIDE PER INFORTUNIUM.—See **HOMICIDE**, § 3.

HOMICIDE SE DEFENDENDO.—See **HOMICIDE**, § 3.

HOMICIDIUM.—Homicide (*q. v.*)

HOMINATIO.—The mustering of men; the doing of homage.

HOMINE CAPTO IN WITHERNAMIU.—See **DE HOMINE CAPTO**, &c.

HOMINE ELIGENDO AD CUSTODIENDAM PECIAM SIGILLI PRO MERCATORIBUS EDITI.—A writ directed to a corporation for the choice of a man to keep one part of the seal appointed for statutes-merchant, when a former is dead, according to the Statute of Acton Burnell.—*Reg. Orig.* 173.

HOMINE REPLEGIANDO.—See **DE HOMINE REPLEGIANDO**.

HOMINES.—Feudatory tenants who claimed a privilege of having their causes, &c., tried only in their lord's court. Kenn. Par. Ant. 15.

HOMIPLAGIUM.—The maiming of a man.—*Du Cange*.

HOMO.—A man; a human being, male or female; a vassal, or feudal tenant; a retainer, dependent or servant.

Homo potest esse habilis et inhabilis diversus temporibus (5 Co. 98): A man may be capable and incapable at different times.

HOMOLOGATION in English law, is the same thing as estoppel *in pais* (*q. v.*) (Burkshaw v. Nicolls, 3 App. Cas. at p. 1026.) In the civil law, the meaning is, confirmation by a court of justice, *e. g.* of an award of arbiters, or other matter needing the approbation of the court to render it valid and enforceable.

HOMSTALE.—A mansion-house.

HOND-HABEND.—See **HAND-HABEND**.

Honeste vivere: To live honorably. One of the three fundamental principles laid down by Justinian.

HONOR.—

§ 1. In English law, honor means (1) a seignory *in capite* of which several inferior lordships or manors depend; and (2) the land or district included in the seignory. An honor cannot be created since the Statute *Quia Emptores*, except by act of parliament. Co. Litt. 108a; Spel. Gloss. s. v.; Madox Bar. Angl. *passim*; 2 Bl. Com. 91; 1 Steph. Com. 215. See **IN CAPITE**; **MANOR**; **TENURE**.

§ 2. In mercantile law, the drawee of a bill of exchange is said to honor it when he accepts it. The acceptor of a bill, or the maker of a note is said to honor it when he pays it. See **BILL OF EXCHANGE**. As to acceptance for honor, see **ACCEPTANCE**, § 5.

HONOR COURTS.—Tribunals held within honors or seignories.

HONORABLE.—A title of courtesy given in England to the younger children of earls, and the children of viscounts and barons; and, collectively, to the house of commons, and the East India Company. In America, a title of courtesy bestowed upon judges, ex-judges, members of congress and of State legislatures, and those who hold, or have held, various other high public offices.

HONORARIUM.—A recompense for service rendered; a voluntary fee to one exercising a liberal profession, *e. g.* a barrister's fee. In England, barristers, queen's counsel and physicians cannot recover, by action, for their services, the obligation to pay them being considered one of honor only. Such is not the case in nearly all of the United States, where such bills are enforceable the same as any other claims for services rendered.

HONORARIUM, (defined). 14 Ga. 89.

HONORARIUM JUS.—In the Roman law, the law of the prætors and the edicts of the ædiles.

HONORARY, (in resolution of board of health). 81 N. Y. 255, 258.

HONORARY CANONS.—Those without emolument. 3 and 4 Vict. c. 113, § 23.

HONORARY FEUDS.—Titles of nobility, descendible to the eldest son, in exclusion of all the rest.

HONORARY SERVICES.—Those incident to grand-serjeanty and commonly annexed to some honor.—*Cowell*.

HONORARY TRUSTEES.—Trustees to preserve contingent remainders, so called because they are bound in honor only, to decide on the most proper and prudential course. Lew. Trusts 408.

HONORIS RESPECTUM.—See **CHALLENGE**, § 3.

HONTFONGENETHEF, or **HONFANGENETHEF**.—A thief taken with bond-habend, *i. e.* having the thing stolen in his hand.—*Cowell*. See **BACKBERINDE**.

HOO.—A hill. Co. Litt. 5b.

HOOK, (to steal). 7 Blackf. (Ind.) 117.

HOOKLAND.—Land ploughed and sown every year.

HOPCON.—A valley.—*Cowell*.

HOPE.—A valley. Co. Litt. 5b.

HOPING AND NOT DOUBTING, (in a will). 2 Cox Ch. 354.

HORA AURORÆ.—The morning bell; as *ignitegium*, or *coverfeu*, was the evening bell.

HORÆ JURIDICÆ, or **JUDICIÆ**.—Hours during which the judges sat in court to attend to judicial business.

HORDA.—In old records, a cow in calf.

HORDERA.—A treasurer.—*Du Cange*.

HORDERIUM.—A hoard, treasury, or repository.—*Cowell*.

HORDEUM PALMALE.—Beer, barley.—*Cowell*.

HORESTI.—The people of Angus-upon-the-Tay, or Highlanders.—*Tomlin*.

HORN CHAINS, (in a contract). 102 Mass. 368.

HORN TENURE.—See **CORNAGE**.

HORN WITH HORN, or **HORN UNDER HORN**.—The promiscuous feeding of bulls and cows, or all horned beasts that are allowed to run together upon the same common.—*Spel. Gloss*.

HORNAGIUM.—See **HORNGELD**.

HORNGELD, or **HORNEGELD**.—A forest-tax paid for horned beasts.

HORNING, LETTERS OF.—In the Scotch law, a warrant for charging persons to pay or perform certain debts and duties; so called because they were originally proclaimed by horn or trumpet.—*Bell Dict.*

HORS DE SON FEE.—Out of the fee. Where land is without the compass of a person's fee. 9 Co. 30; 2 Mod. 104.

HORSE.—The English law as to horses differs from that relating to other chattels chiefly in this respect, that by Stats. 2 and 3 Ph. & M. c. 7, and 31 Eliz. c. 12, the sale of a stolen horse in market overt does not pass the property therein, unless the requirements of the acts to

ensure publicity are complied with, and unless, in addition, the owner fails to put in a claim within six months after the horse was stolen; if he proves his case, and tenders the purchaser the price paid by him, he is entitled to have his horse back again. (Oliph. Hors., *passim*; 2 Steph. Com. 75.) The doctrine of market overt never having been adopted, the above distinction does not exist in the United States, where the owner of any species of chattel may follow it into the hands of any person who purchases it from a thief. As to horse races, see **WAGERS**.

HORSE, (general meaning of). 44 Ga. 263; 2 Ill. 304; 1 Wyom. T. 380.

—— (includes "gelding"). 38 Tex. 555; 2 Ld. Raym. 1209.

—— (when does not include "gelding"). Cout. (Ohio) Cond. Rep. 819; 6 Wheel. Am. C. L. 38.

—— (includes "mare"). 2 Car. & P. 351.

—— (includes "gelding" and "mare"). 2 Utah T. 504.

—— (when does not include "gelding" or "mare"). 1 Tex. App. 448; 3 Id. 240.

—— (in exemption law). 14 Tex. 594; 21 Id. 449.

HORSE GUARDS.—The directing power of the military forces of the kingdom of Great Britain. The commander-in-chief, or general commanding the forces, is at the head of this department. It is subordinate to the War Office, but the relations between them are complicated.—*Wharton*.

HORSE RACING OR TROTTING, (is gaming). 18 Me. 337.

HORSES AND CATTLE, (includes "mules"). 50 Ill. 184.

HORS-WEALH.—The wealth, or Briton who had care of the king's horses.

HORS-WEARD.—A service or *corvée*, consisting in watching the horses of the lord.—*Anc. Inst. Eng.*

HORSTILERS.—Inn-keepers.

HOSPES GENERALIS.—A great chamberlain.

HOSPITAL, (in a statute). L. R. 1 Ex. 368, 377; Wilberf. Stat. L. 122.

HOSPITALERS.—The knights of a religious order, so called because they built a hospital at Jerusalem, wherein pilgrims were received. All their lands and goods in England were given to the sovereign by 32 Hen. VIII. c. 24.

HOSPITATOR.—In old English law, a host or entertainer.

HOSPITICIDE.—One that kills his guest or host.

HOSPITIUM.—An inn; a household.

HOSTAGE.—A person given up to an enemy as a security for the performance of the articles of a treaty, the payment of a ransom bill, &c.

HOSTALAGIUM.—In old records, a right to have lodging and entertainment, reserved by lords, in their tenants' houses.

HOSTELER, or HOSTLER.—An inn-keeper.

HOSTELS.—The Inns of Court. *See* that title.

Hostes sunt qui nobis vel quibus nos bellum decernimus; cæteri pro-ditores vel prædones sunt (7 Co. 24): Enemies are those with whom we declare war, or who declare it against us; all others are traitors or pirates.

HOSTIÆ.—Host-bread, or consecrated wafers in the Holy Eucharist.

HOSTICIDE.—One who kills an enemy.

HOSTILARIA — HOSPITALARIA.—A place or room in religious houses used for the reception of guests and strangers.

HOSTILARIUS.—An hospitaller.

HOSTILE WITNESS.—A witness who so conducts himself under examination-in-chief, that the party who has called him, or his representative, is allowed to cross-examine him, *i. e.* to treat him as though he had been called by the opposite party.

HOSTILITY.—A state of open enmity, or open war between two nations.

HOSTLER, (defined). 8 Co. 32.

HOSTRICUS.—A goshawk. Kenn. Par. Ant. 569.

HOT WATER ORDEAL.—An ancient test, in cases of accusation, by hot water; the party accused and suspected being appointed by the judge to put his arms up to the elbows in seething hot water, which, after sundry prayers and invocations, he did, and was, by the effect which followed, judged faulty or faultless. Verst. Rest. Dec. Intel. 66.

HOTCHPOT.—"It seemeth that this word *hotchpot* is in English a pudding." (Litt. § 267; Co. Litt. 177 a.) It is derived from the Dutch: *hulspot*, from *hutsen*, to shake up, and *pot*; FRENCH: *hochepot*, from *hocher*, to shake up. Littré Dict. s. v.

Where property is settled on the members of a class (*e. g.* the children of a marriage) subject to a power of appointment among them, and part of it is ap-

pointed to one, that one is nevertheless not excluded by law from taking an equal share with the others in the part which remains unappointed, and thus obtaining a larger share than any of the others. This is usually prevented by the insertion of a clause called a "hotchpot clause," which declares that no appointee shall take any share in the unappointed part without bringing his appointed share into hotchpot, *i. e.* without adding it for the purpose of computation to the unappointed part, when the whole is divided equally. Of course an appointee is not bound to do this, and only does it when his appointed share is less than what he would obtain if no appointment had been made. (Elph. Conv. 309; Wats. Comp. Eq. 583.) The various Statutes of Distribution contain similar provisions applying to advancements. *See* ADVANCEMENT; FRANKMARRIAGE.

HOTCHPOT, (defined). 2 McCord (S. C.) Ch. 90; Love. Wills 67.

HOTEL, (defined). 3 Abb. (N. Y.) Pr. N. s. 26; 2 Daly (N. Y.) 15, 17.

— (synonymous with "inn" and "tavern"). 54 Barb. (N. Y.) 311; 1 Hill (N. Y.) 193.

— (keeper of, a trader under bankruptcy act). 3 Ch. D. 457.

HOTEL-KEEPER.—*See* INN-KEEPER.

HOTEL-KEEPER, (who is). 9 Bing. 14; 1 Car. & M. 458.

HOTEL PURPOSES, (land used for). 105 Mass 241.

HOURLY.—The twenty-fourth part of a natural day; sixty minutes of time.

HOUSE.—(1) House means *primâ facie* a dwelling-house. (14 Mees. & W. 185; but *see* 7 Man. & G. 122. As to what will pass under a grant of a "house," *see* 1 Crabb R. P. 68, 87, and the references given under DWELLING-HOUSE.) (2) A collective body of persons, *e. g.* a house of assembly. (3) A commercial firm.

HOUSE, (defined). 42 Ala. 356; 57 Id. 139; Co. Litt. 56 a.

— (includes what). 34 Cal. 242; 3 Pick. (Mass.) 300, 301; 1 Bish. Cr. L. § 306; L. R. 15 Eq. 159; 1 Leach C. C. 69; 7 Man. & G. 66, 122; 6 Mod. 214; 1 P. Wms. 80.

— (what is not). 1 Root (Conn.) 63; 1 Car. & K. 533; 2 Cox C. C. 65.

— (in sense of "legislative body"). 2 Mich. 287.

HOUSE, (as meaning "dwelling-house"). 11 Abb. (N. Y.) Pr. 292, 294; 3 Park. (N. Y.) Cr. 208; 4 Call (Va.) 109; 1 Chit. Gen. Pr. 167.
 — (synonymous with "messuage"). 4 Pa. St. 93.
 — (not synonymous with "barn"). 4 Rawle (Pa.) 342.
 — (grant of). 2 Nev. & M. 428; 1 Co. Litt. 5 b.
 — (in a statute). 35 Iowa 199; 8 Lea (Tenn.) 577; 14 Mees. & W. 181.
 — (in a will). 5 Ind. 334; 2 W. Bl. 889; 9 Co. 128; 1 Cro. Car. 57; 19 Ves. 299.
 — (what will pass under devise of). 9 Pick. (Mass.) 296; 8 Johns. (N. Y.) 59; 1 P. Wms. 603; 2 T. R. 498;
HOUSE AND LOT, (in a deed). 13 Vr. (N. J.) 307.

HOUSE BOTE.—See **ESTOVERS**.

HOUSE, BUILDING, OR MANUFACTORY, (in lands clauses act). 9 Ch. D. 425.
HOUSE CONNECTIONS, (in a contract). 23 Ohio St. 499.
HOUSE, DISORDERLY, (defined). 2 Tex. App. 222.
 — (in a statute). 36 Conn. 77.
 — (indictment for keeping). 118 Mass. 456; 46 N. H. 61.
HOUSE, LEGISLATIVE, (in State constitution). 12 Fla. 653; 72 Mich. 287; 32 Miss. 650.
HOUSE, MY, (in a will). 3 Cranch (U. S.) 137; 3 Bos. & P. 375; 8 Com. Dig. 469.
HOUSE NOW IN OCCUPATION OF A, (in a conveyance). L. R. 7 Q. B. 748.
HOUSE OF ANOTHER, (in a statute). 7 Coldw. (Tenn.) 82.

HOUSE OF COMMONS.—The third branch of the English Parliament (*q. v.*), and consists of representatives of the nation at large (exclusive of the peerage), chosen by election. The counties of the United Kingdom are represented by members who are technically called "knights of shires," and the cities and boroughs by members who are in like manner called "citizens and burgesses." The principal universities also elect representatives. 2 Steph. Com. 333; Stats. 2 Will. IV. c. 45; 30 and 31 Vict. c. 102; 31 and 32 Vict. cc. 48, 49; Ballot Act, 1872. See **LODGER**; **OCCUPATION**; **REGISTRATION**; **REVISING BARRISTER**.

HOUSE OF CORRECTION.—

§ 1. In **English law**, a species of prison, originally designed for the confinement of vagrants and paupers refusing to work. By Stat. 5 and 6 Will. IV. c. 38, they were made available for the detention of prisoners committed for trial (3 Steph. Com. 122), and now there is no distinction between them and other prisons (*q. v.*) Prisons Acts, 1865 and 1877.

§ 2. In **American law**, a prison in which juvenile delinquents and persons guilty of minor offences are confined.

HOUSE OF HER HUSBAND, (in a statute). 59 Me. 441.

HOUSE OF ILL-FAME.—A bawdy house or brothel (*qq. v.*); a house kept for the resort of persons desiring to engage in unlawful sexual intercourse.

HOUSE OF ILL-FAME, (synonymous with "bawdy house" or "brothel"). 33 Conn. 91.
 — (in a statute). 17 Conn. 471.

HOUSE OF ILL-FAME AND PUBLIC HOUSE, (in a declaration). 2 Ind. 212.

HOUSE OF LORDS.—The assembly of lords, spiritual and temporal, which forms the second branch of the English parliament (*q. v.*) The lords spiritual are the two archbishops and such of the bishops of the Church of England as have seats in parliament by ancient usage, or by statute.

§ 2. The lords temporal consist of (1) the peers of the United Kingdom; (2) the representative peers of Scotland and Ireland. The Scotch peers having the right to elect for each parliament sixteen representatives from their own body, and the Irish peers, twenty-eight for life; (3) two life peers, or lords of appeal in ordinary. (See **LORDS OF APPEAL**. May Parl. Pr. 6 *et seq.*) The lord chancellor is prolocutor and president of the house. See **CHANCELLOR**.

§ 3. In addition to their functions as part of the legislature, the house of lords exercise judicial authority (1) in the trial of peers for treason or felony (see **CERTIORARI**, § 4; **LORD HIGH STEWARD**); (2) in claims of peerage; (3) in disputed elections of representative peers; and (4) as a supreme court of appeal from the Court of Appeal in England, and the Superior Courts of Scotland and Ireland. (May Parl. Pr. 53.) As to the practice in appeals to the house of lords, see **APPENDIX**; **CASE**; **PETITION**; also, *ante*, p. 65 *n.*

HOUSE OF REFUGE.—A prison for juvenile offenders.

HOUSE OF REPRESENTATIVES.—The name of the body forming the more popular and numerous branch of the congress of the United States; also, of the similar branch in many of the State legislatures. See **ASSEMBLY**; **CONGRESS**, § 2.

HOUSE, OFFICE, ROOM, OR OTHER PLACE, (in statute against gaming). Wilberf. Stat. L. 185.

HOUSE OR PLACE, (when includes "portable booth"). Wilberf. Stat. L. 127.

HOUSE WITH THE APPURTENANCES, (in a feoffment). 1 Chit. Gen. Pr. 175.

HOUSEAGE.—A fee paid for housing goods by a carrier, or at a wharf, &c.

HOUSEBREAKING is where a person breaks and enters a dwelling-house or building occupied therewith, or a school-house, shop, warehouse or counting-house,

and commits any felony therein, or where a person commits a felony in any such building, and then breaks out of it. *See* BURGLARY.

HOUSE-BURNING.—*See* ARSON.

HOUSE-DUTY.—A tax on inhabited houses imposed by 14 and 15 Vict. c. 36, in lieu of window-duty, which was abolished. *See* 37 Vict. c. 16, §§ 8–10, providing for the stating of a case. *See, also*, HOUSE-TAX.

HOUSEHOLD.—A family residing under the same roof; belonging to a family; domestic.—*Webster*.

HOUSEHOLD, (defined). 18 Johns. (N. Y.) 402.

HOUSEHOLD FURNITURE, (defined). 2 Am. L. Reg. n. s. 489.

— (a watch is not). 33 Me. 535.

— (in exemption law). 18 Minn. 361.

— (in an insurance policy). 2 Hall (N. Y.) 490; 3 Campb. 422.

— (in a will). 2 Dall. (U. S.) 142; 124 Mass. 228, 237; 4 Johns. (N. Y.) Ch. 9; 60 Pa. St. 220; 1 Hill (S. C.) Ch. 98; 5 Munf. (Va.) 273; Amb. 605, 610; 1 Dick. 359; 10 Ch. D. 13; 1 Russ. 427; 3 *Id.* 301; 11 Ves. 666; 13 *Id.* 39; 2 Chit. Gen. Pr. App. 30; 2 Com. Dig. 661.

HOUSEHOLD FURNITURE AND OTHER HOUSEHOLD EFFECTS, (in a will). 1 Sim. & S. 189.

HOUSEHOLD GOODS, (what are). 2 P. Wms. 303.

— (guns and pistols will not pass under devise of). 3 P. Wms. 335.

— (money and bonds will not pass under devise of). 3 P. Wms. 112.

— (plate passes under devise of). 2 P. Wms. 420.

— (in tax law). 15 Minn. 412.

— (in a will). 1 Atk. 470; 1 P. Wms. 425; 2 Com. Dig. 661; 1 Rep. Leg. 253.

HOUSEHOLD GOODS AND FURNITURE, (what will pass under bequest of). 1 Robt. (N. Y.) 21; 1 Johns. (N. Y.) Ch. 329.

— (in a will). 2 Munf. (Va.) 236.

HOUSEHOLD STUFF, (in a will). 1 Rep. Leg. 273.

HOUSEHOLDER.—An occupier of a house; a master of a family.

HOUSEHOLDER, (defined). 51 How. (N. Y.) Pr. 45; 18 Johns. (N. Y.) 401; 19 Wend. (N. Y.) 475.

— (who is). 33 How. (N. Y.) Pr. 323; 6 Oreg. 238; 5 Tex. App. 346; 1 Barn. & C. 123, 178; 2 Dowl. & Ry. 258.

— (under exemption act). 14 Barb. (N. Y.) 456; 6 Daly (N. Y.) 224; 14 How. (N. Y.) Pr. 436; 19 Wend. (N. Y.) 475.

HOUSEKEEPER.—One who is in actual possession of, and who occupies a house, as distinguished from a "boarder," "lodger" or "guest."

HOUSEKEEPER, (defined). 3 Petersd. Abr. 103 n.

— (who is). 6 Bush (Ky.) 429.

— (who is not). 1 Chit. 288, 502.

— (in statute of wills). 27 Ill. 129.

HOUSES, BUILDINGS, AND PROPERTY OTHER THAN LAND, (in a statute). L. R. 10 Q. B. 389

HOUSES FORMING A STREET, (in a statute).

1 Q. B. D. 65.

HOUSES OF PUBLIC WORSHIP, (in tax law).

2 Mich. 586.

HOUSES OF RELIGIOUS WORSHIP, (in a statute).

118 Mass. 164.

HOUSEWIFERY, (is a mystery). 1 Browne

(Pa.) 198.

HOW FAR, (may apply to duration or extent).

3 Mass. 187.

HOWE.—A hill. Co. Litt. 5 b.

HOWGH.—A valley. Co. Litt. 5 b.

HREDIGE.—Readily; quickly. Leg. Athelstan c. 16.

HUEDEGELD.—*See* HIDGELED.

HUE AND CRY.—This, in old English law, "is the old common law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another." (4 Bl. Com. 293.) All those who join in following upon a hue and cry are justified in apprehending the person pursued, even though it should turn out that he is innocent, or that no felony has been committed. To maliciously or wantonly raise a hue and cry is a misdemeanor and an actionable offence. 4 Steph. Com. 351.

HUISSERIUM.—A ship used to transport horses. Also termed *uffer*.

HUISSIER.—An usher of a court.—*Cowell*. The English word "usher" is derived from this word.

HULKA.—A hulk, or small vessel.—*Cowell*.

HULLUS.—A hill.—*Cowell*.

HUMAGIUM.—A moist place.—*Mon. Angl.*

HUNDRED.—A district forming part of a county in England, and governed by a high constable or bailiff. Hundreds were originally so called because each consisted of a hundred families of freeholders, or ten tithings. Each hundred formerly had its court (*see* HUNDRED COURT), but they have fallen into disuse. 1 Bl. Com. 116; 1 Steph. Com. 126. As to the Hundred of St. Briavel's, *see* GALE.

§ 2. The status of a hundredor or freeholder of a hundred is now one of little importance. Under 7 & 8 Geo. IV. (which consolidated the law on the subject), if damage is done to buildings or erections by "persons riotously and tumultuously assembled together," the inhabitants of the hundred, or district in the nature of a hundred in which the offence was committed, are liable to yield full compensation to the

person damnified. The constable represents the hundred in the proceedings to recover the damages, which resemble those in an ordinary action, except that execution is levied by the sheriff making a warrant on the treasurer of the county, directing him to pay the amount to the plaintiff. A summary mode of proceeding is given for cases where the damage does not exceed £30. *Stat. Ac. 346. See Drake v. Footill*, 7 Q. B. D. 201.

§ 3. Formerly the jurors in an action were taken from the neighborhood of the vill or place where the cause of action was laid in the declaration, and some of them were obliged to be returned from the hundred in which the vill lay; if none were returned, the array might be challenged for defect of hundredors. (3 Bl. Com. 359; *Co. Litt.* 157 a.) This rule was abolished by *Stats. 24 Geo. II. c. 16, § 13*, and 6 *Geo. IV. c. 50, § 13. See CHALLENGE; WAPENTAKE.*

HUNDRED, (action against, for damages). *Holt* 200.

HUNDRED BRIDGES, (in highway act). *L. R. 1 C. C. R. 237.*

HUNDRED COURT.—A larger court baron (*q. r.*), being held for all the inhabitants of a particular hundred (*q. v.*) instead of a manor. (2 *Inst.* 71; 3 *Steph. Com.* 281; *County Courts Act, 1867, § 28.*) Hundred courts are now seldom held. *See SALFORD HUNDRED COURT OF RECORD.*

HUNDRED-FECTA.—The performance of suit and service at the hundred court.

HUNDRED-FETENA.—Dwellers or inhabitants of a hundred.

HUNDRED GEMOTE.—Among the Saxons, a meeting or court of the freeholders of a hundred, which assembled, originally, twelve times a year, and possessed civil and criminal jurisdiction and ecclesiastical powers. 1 *Reeves Hist. Eng. Law* 7.

HUNDRED-LAGH, or HUNDRED-LAW.—The liability to attend a hundred court.

HUNDRED-PENNY.—The *hundredfeh*, or tax collected by the sheriff or lord of a hundred.

HUNDREDARIUS.—The chief officer of a hundred.—*Du Cange.*

HUNDREDES EARLDOR, or HUNDREDES MAN.—The presiding officer in the hundred-court.—*Anc. Inst. Eng.*

HURDEREFERST.—A domestic; one of a family.

HURDLE.—A sledge formerly used to draw traitors to execution.

HURST, HYRST, HERST, or HIRST.—A wood or grove of trees.—*Co. i. tit. 4b.*

HURTARDUS, or HURTUS.—A ram, or wether.

HUSBAND.—A married man; the good man of the house. *See next title.*

HUSBAND AND WIFE.—One of the great relationships of private life effected by marriage, by which, at common law, the legal existence of a wife is incorporated with that of her husband. The law of husband and wife deals with the following matters:

(1) The prerequisites and formalities of marriage, as to which, *see AFFINITY; CONSANGUINITY; DOMICILE; LICENSE; MARRIAGE.*

(2) The effect of the marriage on the rights and duties of the parties, as to which, *see COURTESY; DOWER; FRAUD, § 12; FREEBENCH; MARRIAGE; MARRIED WOMEN'S ACTS; NECESSARIES.*

(3) Marriage settlements. *See EQUITY TO A SETTLEMENT; SETTLEMENT.*

(4) Protection orders and separation deeds (*qq. v.*)

(5) Restitution of conjugal rights, judicial separation, and divorce (*qq. v.*)

HUSBAND AND WIFE, (defined). 5 *Barb. (N. Y.)* 117.

—— (bond given to). 5 *Wheel. Am. C. L.* 574.

—— (in a deed). 7 *Dowl. & Ry.* 141.

—— (seisin of, in land conveyed to them jointly). 8 *Mass.* 274; 5 *Halst. (N. J.)* 42; 8 *Cow. (N. Y.)* 277; 16 *Johns. (N. Y.)* 115; 15 *Wend. (N. Y.)* 615, 617; 19 *Id.* 175; *Ohio Cond. Rep.* 372; 5 *Wheel. Am. C. L.* 572; 7 *Id.* 529; 5 *T. R.* 654.

HUSBAND LAND.—In old Scotch law, a piece of land containing about six acres.—*Skene de verb Signif.*

HUSBAND OF A SHIP.—*See SHIP'S HUSBAND.*

HUSBANDLIKE MANNER, (what is using land in). 15 *Wend. (N. Y.)* 170.

HUSBANDMAN.—An agriculturist; a farmer (*q. v.*)

HUSBANDMAN, (in an indictment). 4 *Com. Dig.* 666.

HUSBANDRY.—Agriculture; farming.

HUSBRECE.—Burglary.—*Blount.*

HUSCARLE.—A menial servant.—*Domesd.*

HUSFASTNE.—He who holds house and land. Bract. l. 3, t. 2, c. 10.

HUSGABLE.—House rent or tax. Mon. Aug. iii. 254.

HUSH-MONEY.—A bribe to hinder information; pay to secure silence.

HUSTINGS.—Council; court; tribunal. Apparently so called from being held within a building, at a time when other courts were held in the open air. It was a local court. The county court in the city of London bore this name. There were hustings at York, Winchester, Lincoln, and in other places, similar to the London hustings. (Mad. Exch. c. xx.) Also the raised place from which candidates for seats in parliament address the constituency, on the occasion of their nomination.

HUTESIUM ET CLAMOR.—Hue and cry. See HUE AND CRY.

HUTILAN.—Taxes.—Mon. Ang. i. 586.

HWATA, or HWATUNG.—Augury, divination.—Anc. Inst. Eng.

HYBERNAGIUM.—The season for sowing winter corn between Michaelmas and Christmas. See IBERNAGIUM.

HYBRID.—A mongrel, or mule—an animal formed of the union of different species, or different genera; also (metaphorically) a human being born of the union of persons of different races.—Wharton.

HYD.—(1) Hide, skin. (See HIDE-GILD.) (2) A measure of land, containing, according to some, a hundred acres, which quantity is also assigned to it in the *Dialogus de Scaccario*. It seems, however, that the hide varied in different parts of the kingdom. See HIDE OF LAND.

HYDAGE.—See HIDAGE.

HYPOBOLUM.—In the civil law, a legacy to a wife above her dower.—Calv. Lex.

HYPOTHEC.—In the Scotch law, a security established by law in favor of a creditor over the property of his debtor; as in the case of a landlord for his rent (see 30 and 31 Vict. c. 42), or a law agent for his charges. See HYPOTHECATION.

HYPOTHECA.—This was a term of the Roman law, and denoted a pledge or mortgage. As distinguished from the term *pignus*, in the same law, it denoted a mortgage whether of lands or of goods in which the subject in pledge remained in the possession of the mortgagor or debtor, whereas in the *pignus* the mortgagee or creditor was in the possession. Such an *hypotheca* might be either express or implied: (1)

Express, where the parties upon the occasion of a loan entered into an express agreement to that effect; or (2) implied, as, e. g. in the case of the stock and utensils of a farmer (*colonus*), which were subject to the landlord's right as a creditor for rent; whence the Scotch law of hypothec. The word has suggested the term *hypothecate*, as used in the mercantile and maritime law. Thus, goods are frequently said to be hypothecated; and a captain is said to have a right to hypothecate his vessel for necessary repairs.

HYPOTHECATION.—LATIN: *hypotheca*; GREEK: *ὑποθήκη*, from *ὑπο*, under, *τίθημι*, to place. For a history of the Latin *hypotheca*, see Markby's Elements of Law, § 507; Kuntze, *Cursus*, § 555.

§ 1. **Ship.**—In its proper sense, hypothecation is where a ship, or her freight or cargo, or all three, are made liable for the payment of money borrowed by the master. It is of two kinds—bottomry and *respondentia* (qq. v.) Fish. Mort. 7, 77 et seq.; Maud & P. Mer. Sh. 433; Wms. & B. Adm. Pr. 31.

§ 2. **Property.**—In modern times attempts have been made to introduce "hypothecation" from the Roman law, as a general term equivalent to "charge," the proper English term. In this use of the word, to hypothecate property is to charge it with the payment of a sum of money or the performance of an obligation, giving the person in whose favor it exists neither the right to the possession of the property, nor the right to sell it, but merely the right of realization by judicial process, in case of non-payment or non-performance at the proper time. Fisher, l. c., where the term is also made to include equitable assignments of debts, &c. See PLEDGE.

HYPOTHECATION, (defined). Story Bailm § 288.

— (of stock). 7 Cow. (N. Y.) 410.

HYPOTHEQUE.—In the French law, the mortgage of real property in English law. It is a real charge, following the property into whose-soever hands it comes. Such a charge may be either (1) *légale*; or (2) *judiciaire*; or (3) *conventionnelle*. It is *légale*, as in the case of the charge which the State has over the lands of its accountants, or which a married woman has over those of her husband; it is *judiciaire* when it is the result of the judgment of a court of justice, and it is *conventionnelle* when it is the result of an agreement (which must be express) of the parties.—Brown.

HYPOTHETICAL YEARLY TENANCY.—The basis, in England, of rating

lands and hereditaments to the poor rate, and to other rates and taxes that are expressed to be leviable or assessable in like manner as the poor rate.

HYRNES.—Parish.

HYSTEROPOTMOI.—Those who, having been thought dead, had, after a long absence in foreign countries, returned safely home; or those who having been thought dead in battle,

had afterwards unexpectedly escaped from their enemies and returned home. These, among the Romans, were not permitted to enter their own houses at the door, but were received at a passage opened in the roof.—*Encycl. Lond.*

HYSTEROTOMY.—The Cæsarian operation.

HYTHE.—A port or little haven at which to lade or unlade wares.—*Blount; Cowell*

I.

I DESIRE, (in a will). 2 Bouv. Inst. 328.
I DO NOT DOUBT, (in a will). 2 Bouv. Inst. 328.

I ENTREAT, (in a will). 2 Bouv. Inst. 328.
I GUARANTY THE PAYMENT OF THE WITHIN NOTE AT THE INSOLVENCY OF THE DRAWERS, (effect of a guaranty in these words). 5 Humph. (Tenn.) 476.

I HAVE BLOOD IN ME IF I HAD YOU IN ANOTHER PLACE, (in indictment for words). Gilb. Eq. 36.

I HAVE BORROWED, (imports promise to pay). 6 Dana (Ky.) 341.

I HERE WILL TO REVERT TO C., (in a will). L. R. 7 H. L. 388.

I HOPE, (in a will). 2 Bouv. Inst. 328.
I MOST EARNESTLY BESEECH, (in a will). 2 Bouv. Inst. 328.

I O U.—A written acknowledgment of a debt, so called because it commences with those letters, which custom has substituted for the words, *I owe you*, because they have the same sound. It ordinarily runs thus: "To Mr. A. B., I O U Twenty Dollars. C. D. January 1st, 1883." It should be addressed to the creditor by name, but that is not essential to its validity. It is evidence of an account stated with the creditor, if named; if he is not named, it is *primâ facie* evidence of an account stated with the person producing it. It is not negotiable. See Byles Bills 28.

I O U, (when a promissory note). 1 Car. & K. 33.

— (when not a promissory note). 13 Mass. 161; 1 Esp. 426, 427.

I ORDER AND DIRECT, (in a will). 2 Bouv. Inst. 328.

I PROMISE, (in sealed instrument, signed and sealed by two). 6 Rand. (Va.) 39.

I PROMISE TO PAY, (in a promissory note). Holt 474.

— (in a promissory note made by two persons). 7 Mass. 58.

— (in promissory note of firm). 2 Dowl. & Ry. 588; 11 Johns. (N. Y.) 544; 7 Wheel. Am. C. L. 223; 1 Barn. & C. 407, 408.

I PROMISE TO PAY, (when joint and several). 2 Peake 130.

I RETURN TO A. HIS BOND, (in a will). 8 Com. Dig. 476; 3 Ves. 231.

I WARRANT THIS NOTE GOOD, (indorsed by payee upon note). 14 Wend. (N. Y.) 231.

I WILL, (in a will). 2 Bouv. Inst. 328.

IBERNAGIUM.—The season for sowing winter corn.—*Cart. Antiq. MSS.*

Ibi semper debet fieri triatio ubi juratores meliorem possunt habere notitiam (7 Co. 1 b): A trial should always be had where the jurors can be the best informed.

IBIDEM, IBID., or ID.—In the same place, book, or case.

ICENI.—The ancient name for the people of Suffolk, Norfolk, Cambridgeshire and Huntingdonshire.

ICONA.—A figure or representation of a thing.—*Du Cange.*

ICTUS ORBUS.—A maim, bruise, or swelling; a hurt without cutting the skin.—*Cowell.*

ID.—An abbreviation of *idem* (q. v.)

Id certum est quod certum reddi potest; sed id magis certum est quod de semet ipso est certum. See CERTUM EST, &c.

ID EST.—That is. Commonly abbreviated *i. e.*

Id perfectum est quod ex omnibus suis partibus constat (9 Co. 9): That is perfect which consists of all its parts.

Id possumus quod de jure possumus (Lane 116): We may do only that which by law we are allowed to do.

Id quod nostrum est, sine facto nostro ad alium transferri non potest (D. 50, 17, 11): That which is ours cannot be transferred to another without our act.

IDEM.—The same.

Idem agens et patiens esse non potest (Jenk. Cent. 40): The same person cannot be both agent and patient, *i. e.* the doer and person to whom the thing is done.

Idem est facere, et non prohibere cum possis; et qui non prohibet, cum prohibere possit, in culpa est (aut jubet) (3 Inst. 158): To commit, and not to prohibit when in your power, is the same thing; and he who does not prohibit when he can prohibit, is in fault, or does the same as ordering it to be done.

Idem est nihil dicere, et insufficenter dicere (2 Inst. 178): It is the same thing to say nothing, and to say a thing insufficiently.

Idem est non esse et non apparere (Jenk. Cent. 207): Not to be and not to appear are the same.

IDEM PER IDEM.—The same for the same. An illustration of a kind that really adds no additional element to the consideration of the question.

Idem semper antecedenti proximo refertur (Co. Litt. 685): "The same" is always referred to its next antecedent.

IDEM SONANS.—Sounding alike. The courts will not set aside proceedings on account of the misspelling of names, provided the variance is so trifling as not to mislead, or the name as spelt be *idem sonans*, as Lawrance instead of Lawrence, Reynell for Reynolds, Beneditto for Benedetto. 1 Crompt. and M. 806; 1 Chit. 659, 6 Price 2; 2 Taunt. 401. See **VARIANCE**.

IDEM SONANS, (when name is). 2 N. H. 557, 558; 7 Wheel. Am. C. L. 50; 16 East 110.

IDENTIFICATION—IDENTITY.—To identify a person or thing is to show that he or it is *the* person or thing in question. Thus, on an inquest or trial for murder, the first thing is to identify the deceased, *i. e.* prove who he was. So in investigating the title of land, the purchaser, in the absence of a stipulation to the contrary, is entitled to proof of the identity of the land described in the title deeds, with that which he has contracted to purchase. As to identity generally, see **MORIARTY** on Personation.

Identitas vera colligitur ex multitudine signorum (Bacon): True identity is collected from a multitude of signs.

IDENTITATE, or IDEMPTITATE NOMINIS.—See **DE IDENTITATE NOMINIS**.

IDEO CONSIDERATUM EST.—Therefore it is considered. See **CONSIDERATUM EST**, &c.

IDES.—A division of time among the Romans. In March, May, July, and October, the Ides were on the 15th of the month, in the remaining months, on the 13th. This method of reckoning is still retained in the Chancery of Rome, and in the calendar of the Breviary.—*Wharton*.

IDIOCHIRA.—In the civil law, an instrument privately executed, as distinguished from one publicly executed.—*Calv. Lex*.

IDIOCY—IDIOT.—According to the old lawyers, an idiot, or fool natural, is a person, who from his birth, by a perpetual or incurable infirmity, is of unsound mind. (Co. Litt. 247 a; 4 Co. 124 b; Pope Lun. 12; Maudsley on Mental Disease 66.) By the Statute *De Prerogativa Regis*, 17 Edw. II. c. 9, the king shall have the custody of the land of natural fools, taking the profits of them without waste or destruction, and shall find them their necessities; and after their death he shall render the lands to their right heirs. This prerogative was never favored at law (Pope Lun. 25), and is now never exercised, the procedure by inquisition in lunacy having made it unnecessary. At the present day, idiocy is considered as a species of insanity or lunacy. See **INSANITY**; **LUNACY**; **MUTE**; **NON COMPOS MENTIS**.

IDIOT, (defined). 24 Ind. 231; 17 Am. Dec. 311.

IDONT, (defined). 88 Ill. 498.

IDIOTA INQUIRENDO.—See **DE IDIOTA INQUIRENDO**.

IDONEUM SE FACERE—IDONEARE SE.—To purge one's self by oath of a crime of which one is accused.

IDONEUS HOMO.—A proper man. He is legally said to be *idoneus homo* who has honesty, knowledge, and ability.

IDUMANUS FLUVIUS.—Black Water in Essex.

IF, (in a deed). Shep. Touch. 125.

— (in a grant). 102 Mass. 105; 77 N. C. 176.

— (in a will). 3 Lev. 132; 2 Russ. Ch. 365; Toll. Ex. 171, 172; 2 Wms. Ex. 932.

IF ANY PERSON, (in a statute). 5 Cow. (N. Y.) 684.

IF ANY SUCH HER SURVIVING, (annexed to the word "heirs" in a will). South. (N. J.) 451.

IF ANYTHING SHOULD REMAIN, (in a devise of real estate). 100 Mass. 471.

IF BOTH SHOULD DIE, (in a will, construed as a condition). 3 Harr. (N. J.) 36.

IF DEMANDED, (in a will). 1 Hall (N. Y.) 1.

IF HE ATTAIN TWENTY-ONE, (words of condition in a devise). 16 East 412.

IF HE DIE WITHOUT SUCH HEIRS, (in a will). South. (N. J.) 431.

IF HE SHOULD DIE, (in a will). 1 Hall (N. Y.) 13; 3 Russ. 365, 368.

IF IT SHALL BE THOUGHT BEST, (in a will). 102 Mass. 271.

IF IT WAS HIS WILL SO TO DO, (not obligatory, but discretionary). 9 Mod. 59.

IF ONE OF THEM SHOULD DIE, (in a will). 8 Wheel. Am. C. L. 409.

IF SHE BE LIVING, (in a will). 1 McCart. (N. J.) 76.

IF SHE SO LONG LIVE, (in a settlement). 2 Atk. 89, 92.

IF T. C. SHALL DIE AN INFANT, UNMARRIED AND WITHOUT ISSUE, (in a devise). 7 East 269.

IF THEY SHOULD LIVE TO BECOME OF AGE, (in a will). 7 Wend. (N. Y.) 52.

IF YOU BELIEVE FROM THE EVIDENCE, (in a charge to the jury). 38 Iowa 504.

IFUNGIA.—The finest white bread, formerly called "cocked bread."—*Blount*.

IGNIS JUDICIUM.—The old judicial trial by fire.—*Blount*.

IGNITEGIUM.—The curfew.—*Encycl. Lond.*

IGNOMINY.—Dishonor; infamy; public disgrace.

IGNOMINY, PUBLIC, (means "public disgrace"). 38 Iowa 220.

IGNORAMUS, "We know nothing of it," was the indorsement formerly made on a bill of indictment by a grand jury when they thought the charge not sustained by the evidence. They now indorse "Not a true bill," or "Not found." 4 Steph. Com. 367. See **INDICTMENT**.

IGNORANCE.—The lack of knowledge or information as to some fact or rule of law. See **MISTAKE**.

IGNORANCE, (defined). 4 Dutch. (N. J.) 274, 279.

IGNORANCE OF THE LAW, (when money will not be paid back, under plea of). 2 East 469, 470.

IGNORANCE OR MISTAKE, FROM, (in 33 Geo. III. c. 5). 1 Dowl. & Ry. 540.

Ignorantia eorum quæ quis scire tenetur non excusat (Hale P. C. 42): Ignorance of those things which one is bound to know, excuses not.

Ignorantia facti excusat, ignorantia juris non excusat (1 Co. 177): Ignorance of the fact excuses; ignorance of the law excuses not. Every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance may not be carried. Therefore, (1) money paid with full knowledge of the facts, but through ignorance of the law, is not recoverable, if there be nothing against conscience in retaining it; and (2) money paid in ignorance of the facts is recoverable, provided there have been no laches in the party paying it. In criminal cases, this maxim applies, as where a man thinks he has a right to kill a person excommunicated or outlawed wherever he meets him, and does so, this is murder. But a mistake of fact is an excuse, as where a man intending to kill a thief or house-breaker in his own house by mistake kills one of his own family, this is no criminal action. 4 Bl. Com. 27.

Ignorantia judicis est calamitas innocentis (2 Inst. 591): The ignorance of the judge is the misfortune of the innocent party.

IGNORANTIA JURIS HAUD EXCUSAT, (applied). L. R. 2 H. L. 150.

IGNORANTIA JURIS NEMINEM EXCUSAT, (applied). L. R. 6 H. L. 223.

Ignorantia juris, quod quisque scire tenetur, neminem excusat (2 Co. 3b): Ignorance of the law, which every one is held to be cognizant of, excuses no one.

IGNORANTIA LEGIS NEMINEM EXCUSAT, (applied). 56 Ala. 16; 57 *Id.* 394.

IGNORATIO ELENCHI.—An overlooking of the adversary's counterposition in an argument.

Ignoratis terminis ignoratur et ars (Co. Litt. 2): The terms being unknown, the art also is unknown.

IGNORE.—To be ignorant of; to pass by as if not existing. A grand jury are said to ignore a bill of indictment when they think the charge not sustained by the evidence. See **INDICTMENT**; **JURY**.

ILET.—A little island.

ILL, (in a statute). 3 Q. B. D. 426.

ILL TREAT HIM, (covenant in a bond not to). 13 East 2.

ILL TREATMENT, (what amounts to). 1 Esp. 441.

— (of a wife, when court will allow alimony). 2 Desaus. (S. C.) 45; 4 *Id.* 33, 79, 91, 183.

ILLATA ET INVECTA.—Things brought into the house for use by the tenant were so called, and were liable to the *jus hypothecæ* of Roman law, just as they are to the landlord's right of distress at common law.

ILLEGAL.—

§ 1. An act is illegal when it is one which the law directly forbids, as to commit a murder, to obstruct a highway, to sell a loaf otherwise than by weight. (Poll. Cont. 218; *Collins v. Blantern*, 1 Sm. Lead. Cas. 369.) The illegality of an act is not only of importance as subjecting the doer to the penalties imposed for disobedience of the law, but also because the act is not recognized by law as capable of creating any right, except as a remedy for any injury caused by it. Thus, if A. agrees with B. to pay him £50 for the publication of a libel, or the like, the contract is void. (*Id.* 250; *Stockdale v. Onwhyn*, 5 Barn. & C. 173. See *In re South Wales, &c. Co.*, 2 Ch. D. 763.) But an act is not illegal in the strict sense simply because it is not recognized by the law as capable of giving rise to rights. Thus, a contract made *ultra vires* is void, but not illegal. *Ashbury, &c. Co. v. Riche*, L. R. 7 H. L. 672.

§ 2. Illegal is also used (1) in the same sense as unlawful (*q. v.*); (*See Chit. Cont. 607 et seq.*); (2) in the same sense as void; (L. R. 9 Ex. 262, corrected by Lord Cairns, L. R. 7 H. L. 673); but it is convenient to keep the ideas distinct. See IMMORALITY.

ILLEGAL, (defined). 72 Ind. 338; 48 N. H. 199.

—— (in a statute). 3 Sneed (Tenn.) 64.

ILLEGAL CONDITIONS.—

All those that are impossible or contrary to law, immoral, or repugnant to the nature of the transaction. See CONDITION, § 10.

ILLEGAL CONSIDERATIONS.—

See CONSIDERATION, § 8.

ILLEGAL CONTRACT.—

An agreement to do any act forbidden by the law, or to omit to do any act enjoined by the law.

ILLEGAL GAMING, (what is). 81 N. Y. 539.

ILLEGALITY, (defined). 1 Abb. (N. Y.) Pr. n. s. 432; 2 Tex. App. 74.

—— (in act concerning roads). 2 Halst. (N. J.) 203.

ILLEGITIMACY.—See BASTARD; CHILD, § 2; LEGITIMACY.

ILLEGITIMATE, (in revised statutes). 18 Hun (N. Y.) 507.

ILLEGITIMATE CHILDREN, (what are). 12 Rob. (La.) 71.

ILLEVIABLE.—A debt or duty that cannot or ought not to be levied.—*Cowell*.

ILLCIT.—Unlawful.

ILLCIT TRADE.—In policies of marine insurance, the warranty against illicit trade means trade made unlawful by the laws of the country to which the vessel is bound. "It is not the same with contraband trade, although the words are sometimes used as synonymous. Illicit or prohibited trade is one which cannot be carried on without a distinct violation of some positive law of the country where the transaction is to take place." 1 Pars. Mar. Ins. 614.

ILLCITE.—Unlawfully.

ILLCITUM COLLEGIUM.—An illegal corporation.

ILLINOIS CURRENCY, (defined). 28 Ill. 463. — (in certificate of deposit). 27 Ill. 501; 37 Barb. (N. Y.) 62.

ILLITERATE.—Unlettered; ignorant; unlearned. Generally used of one who cannot read and write.

ILLOCABLE.—Incapable of being placed out or hired.

ILLUD.—That.

Illud, quod alias licitum non est, necessitas facit licitum; et necessitas inducit privilegium quoad jura privata (Bac. Max.): That which is otherwise not permitted, necessity permits; and necessity makes a privilege as to private rights.

Illud, quod alteri unitur, extinguitur, neque amplius per se vacare licet (Godolph. Rep. Can. 169): That which is united to another is extinguished, nor can it be any more independent.

ILLUSORY.—See APPOINTMENT, § 3.

ILLUSORY CONSIDERATION, (what is). 1 Ves. 91.

ILLUSTRIOUS.—The prefix to the title of a prince of the blood in England.

IMAN, IMAM, or IMAUM.—A Mohammedan prince having supreme spiritual as well as temporal power; a regular priest of the mosque.

IMBARGO.—See EMBARGO.

IMBASING OF MONEY.—Mixing the species with an alloy below the standard of sterling. 1 Hale P. C. 102.

IMBECILITY.—Weakness, or feebleness of intellect, either congenital, or resulting from an obstacle to the development of the faculties, supervening in infancy. See Whart. & S. Med. Jur. §§ 229–233.

IMBECILITY, CORPORAL, (defined). 4 Wheel. Am. C. L. 514.

—— (a cause for divorce). 8 Conn. 167, 168.

IMBECILITY OF MIND, (what is). 1 Hagg. Ec. 401–404.

—— (in the grantor, when not sufficient to avoid his deed). 21 Wend. (N. Y.) 142.

IMBEZZLE.—See **EMBEZZLE**.

IMBRACERY.—See **EMBRACERY**.

IMBROCUS.—A brook, gutter, or water-passage.—*Cowell*.

IMITATION, (under counterfeit law). 7 Pet. (U. S.) 136.

IMMATERIAL.—Not material or necessary; not important or pertinent; not decisive.

IMMATERIAL AVERMENT.—An unnecessary statement. See Steph. Pl. (7 edit.) 193; also, **IMPERTINENCE**.

IMMATERIAL AVERMENT, (defined). 3 Ala. 237, 245.

IMMATERIAL ISSUE.—An issue upon a point or ground which will not decide the action. Steph. Pl. (7 edit.) 95–98, 127. See **ISSUE**.

IMMEDIATE.—At once; directly; without delay.

IMMEDIATE, (defined). 43 Ill. 155, 166; 7 Man. & G. 493.

—— (in the code). 13 N. Y. 292.

—— (means reasonable time). 47 Conn. 568.

IMMEDIATE APPREHENSION, (what is). 1 Moo. & R. 15, 17.

IMMEDIATE BENEFIT, (defined). 11 Barb. (N. Y.) 471.

IMMEDIATE DANGER, (in statute against carrying concealed weapons). 11 Bush (Ky.) 688.

IMMEDIATE DELIVERY, (as used by coal shippers and dealers). 7 Vr. (N. J.) 148, 153.

—— (in a statute). 43 Wis. 316.

IMMEDIATE DESCENT, (what is). 7 Cranch (U. S.) 467; 6 Pet. (U. S.) 112, 113; 7 Wend. (N. Y.) 334.

IMMEDIATE ESTATE OF INHERITANCE, (defined). 3 Pick. (Mass.) 204.

IMMEDIATE EXECUTION.—The English Judicature Act, 1875, Ord. XLII., r. 15, provides that every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writs or writs of *fiery facias*, or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows: (1) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period. (2) The court or judge at the time of giving judgment, or the court or a judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods hereinbefore prescribed. See **EXECUTION**; **SPEEDY EXECUTION**.

IMMEDIATE ISSUE, (in statute restricting entailment of real estate). 11 Ohio St. 173.

IMMEDIATE NOTICE, (defined). 11 Barb. (N. Y.) 473.

—— (what is not). 29 Pa. St. 200; 5 Dowl. & Ry. 588, 589.

IMMEDIATE PURSUIT, (in a statute). 1 Chit. Gen. Pr. 625.

IMMEDIATELY, (defined). 17 Ala. 89, 100; 2 Vr. (N. J.) 313, 316; 6 Munf. (Va.) 83.

—— (imports “as soon as conveniently could be done”). 4 Com. Dig. 671 n. (b).

—— (in an indictment). Com. 478; 1 Doug. 211; 1 Chit. Cr. L. 220.

—— (in an insurance policy, defined). 51 Md. 512.

—— (in licensing act). 4 Q. B. D. 469.

—— (in a writ of attachment). 4 Younge & Coll. C. C. 512.

—— (in statute regulating advertisements of constables' sales). 13 Johns. (N. Y.) 251.

—— (legacy payable). 1 Halst. (N. J.) 137.

—— (not synonymous with “then and there”). 1 Mo. App. 3, 6.

—— (synonymous with “forthwith”). 7 Man. & G. 493.

—— (when means “in a reasonable time”). Wilberf. Stat. L. 132, 133.

IMMEDIATELY ADJOINING LAND, (in a statute). L. R. 5 Eq. 104.

IMMEDIATELY AFTERWARDS, (in a statute). 8 Mees. & W. 281, 286.

IMMEDIATELY APPREHENDED, (in a statute). 2 C. P. D. 194.

IMMEDIATELY THEREUPON, (defined). 8 Mees. & W. 281, 286.

IMMEMORIAL.—Beyond human memory; time out of mind.

IMMEMORIAL USAGE.—A practice which has existed time out of mind; custom; prescription. See **MEMORY**.

IMMEUBLES.—These are, in French law, the immovables of English law. Things are *immeubles* from any one of three causes: (1) From their own nature, *e. g.* lands and houses; (2) from their destination, *e. g.* animals and instruments of agriculture when supplied by the

landlord; or (3) by the object to which they are annexed, *e. g.* easements.—*Brown*.

IMMIGRATION.—Removal to one place or country from another, as distinguished from "emigration," which is the act of removing from one place or country to another. One who is called an "emigrant" at the place of his former residence, is styled an "immigrant" on arrival at his new domicile. See **EMIGRATION**.

IMMODERATE, (applied to driving, synonymous with "negligent"). 24 Wend. (N. Y.) 466.

IMMORALITIES OF CLERGYMAN, (when good cause of dismission). 5 Pick. (Mass.) 479.

IMMORALITY.*—This word is of importance in law, because no party to a transaction founded on immorality can invoke the assistance of a court of law in enforcing, nor (except in a few cases) in setting it aside. Thus, a contract for an immoral purpose or for an immoral consideration is void; but a party to an immoral contract or conveyance cannot, as a general rule, have it set aside. *Ayerst v. Jenkins*, L. R. 16 Eq. 275; *Batty v. Chester*, 5 Beav. 103, cited in Poll. Cont. 241.

§ 2. Almost the only kind of immorality having this vitiating effect is that consisting in illicit cohabitation. Thus, an agreement providing for or tending to illicit cohabitation is void. (Poll. Cont. 243 *et seq.*; Chit. Cont. 611 *et seq.*) Yet a sealed contract, made in consideration of past seduction or cohabitation, can be enforced; not because it is binding in honor and conscience, for such a reason is not sufficient, but because a specialty imports a consideration, which, unless illegal, both parties are estopped from denying. A covenant to pay money in consideration of future cohabitation is void, though under seal. 1 Vern. 483; 2 Wils. 339.

IMMOVABLE.—Not to be forced from its place—the civil law characteristic of things real or land.

IMMUNITY.—Exemption from some duty, obligation, penalty, or service imposed on other persons by the law.

IMPAIR.—To weaken, diminish, or relax, or otherwise affect in an injurious manner.

IMPAIR, (defined). 6 Otto (U. S.) 600

IMPAIRING, (in State constitution). 4 Liu (Ky.) 53; 4 Metc. (Ky.) 294.

IMPAIRING THE OBLIGATION OF CONTRACTS, (under United States constitution). 3 Dall. (U. S.) 386; 6 Cranch (U. S.) 87, 144; 7 Id. 164; 9 Id. 43, 46; 2 Pet. (U. S.) 380; 3 Id. 289; 4 Id. 529; 8 Id. 88; 9 Id. 330; 4 Wheat. (U. S.) 122, 192, 197, 200, 209, 518, 627, 641, 651, 657, 682; 5 Id. 420; 6 Id. 131; 7 Id. 183; 8 Id. 2; 12 Id. 213, 303, 370; 3 Blackf. (Ind.) 275; 4 Gill & J. (Md.) 1; 9 Mass. 360, 363; 13 Id. 1; 16 Id. 247, 271; 6 Pick. (Mass.) 451; 7 Id. 459; 1 Harr. (N. J.) 11; Penn. (N. J.) 308, 435; 1 South. (N. J.) 198; 7 Johns. (N. Y.) Ch. 306; 7 Johns. (N. Y.) 477; 16 Id. 233; 17 Id. 195; 3 Johns. (N. Y.) Cas. 73; 3 Paige (N. Y.) 49; 3 Wend. (N. Y.) 609; 20 Id. 365; 2 Serg. & R. (Pa.) 371; 3 Id. 70; 16 Id. 178; 4 Hen. & M. (Va.) 315; 5 Am. L. J. 520; 6 Id. 474; 1 Kent Com. 413, &c.

IMPALARE.—To put in a pound.—*Du Cange*.

IMPANEL.—In English practice, a jury is said to be impanelled when the sheriff has entered their names in the panel (*q. v.*) (Co. Litt. 158b.) In American practice, the word is applied also to the list of jurors drawn by the clerk for the trial of a particular case.

IMPANELLING, (defined). 7 How. (N. Y.) Pr. 443.

IMPARGAMENTUM.—The right of impounding cattle.

IMPARL.—To have license to settle a litigation amicably; to obtain delay for adjustment.

IMPARLANCE.—An indulgence formerly granted to a defendant to defer pleading to the action until a subsequent term. It is said that the reason of allowing an imparlance was to give the plaintiff an opportunity of settling the matter amicably with the defendant without further prosecuting his suit; and the court is in the habit, in a proper case, of allowing the parties time to consider about a compromise of the action. By the 2 Will. IV. c. 39, imparlances as such were abolished in England; and more recently, by r. 31 T. T. 1853, no entry or continuance by way of imparlance, or otherwise, was to be made on any record or roll whatever, or in the pleadings.—*Brown*.

IMPARSONEE.—A clergyman inducted into a benefice. See **INDUCTION**.

* "When we call a thing immoral in a legal sense, we do not mean so much that it is ethically wrong, as that, according to the common understanding of reasonable men, it would be a scandal

for a court of justice to treat it as lawful or indifferent, though the transaction may not come within any positive prohibition or penalty." Poll. Cont. 242.

IMPARTIALLY, (as meaning "faithfully"). 2 Vr. (N. J.) 342.

—— (in a statute). 1 Harr. (N. J.) 72.

IMPATRONIZATION.—The act of putting into full possession of a benefice.

IMPEACH, (defined). 36 Me. 36, 47.

—— (as applied to records, defined). 1 Gr. (N. J.) 144.

IMPEACHMENT.—A complaint or accusation, in writing, against an officer for a great public offence, such as treason, bribery, and other high crimes and misdemeanors. The house of commons or, in America, the house of representatives, first find the crime, and then as prosecutors support their charge before the house of lords, (or senate, as the case may be,) who try and adjudicate upon it. The charge is contained in articles of impeachment, to which the accused makes answers, and so on; the accusing body appoint managers to conduct the proceeding on their behalf. (May Parl. Pr. 55, 680; Cox Inst. 470; 4 Steph. Com. 299; Story Const. § 791 *et seq.*) State officers are also sometimes impeached in a similar manner by the legislatures of their states.

IMPEACHMENT OF WASTE.—Where an estate for life is given to a person "without impeachment of waste," he may cut down trees on the land and convert them to his own use (Co. Litt. 220 a), and open mines, &c.; but he may not pull down the family mansion, or fell ornamental timber, or commit any other acts of the kind known as equitable waste. 4 Wms. Real Prop. 25. See **WASTE**.

IMPEACHMENT OF WITNESS.—Proof that a witness who has testified in a cause is unworthy of credit. Usually the general character of the witness for truthfulness is attacked, or evidence is adduced of statements alleged to have been previously made by him, inconsistent with or contradictory to those made by him at the trial.

IMPEACHMENT OF WITNESS, (rule as to). 49 Ill. 299.

IMPEACHIARE.—To impeach, to accuse, or prosecute for felony or treason.

IMPEDE, (distinguished from "obstruct"). 6 C. E. Gr. (N. J.) 27.

IMPEDIATUS.—See **EXPEDITATE**.

IMPEDIENS.—A defendant or deforciant.

IMPEDIMENTS.—Disabilities, or hindrances to the making of contracts, such as coverture, infancy, want of reason, &c.

IMPEDIMENTUM DIRIMENS.—"Cause or impediment" to marriage, which is not removed by the actual solemnization of the rite, but continues in force and makes the marriage null and void (opposed to *impedimentum impediens*). See Sanchez de Matrimonio, lib. 7 Disputatio, 6.—*Wharton*.

IMPENSÆ.—In the civil law, expense; outlay.

IMPERATIVE.—See **DIRECTORY**.

IMPERFECT, (as applied to a testamentary paper). 2 Add. 357.

IMPERFECT OBLIGATIONS.—Moral duties, such as charity, gratitude, &c., which cannot be enforced by law.

IMPERFECT TRUST.—An executory trust (*q. v.*); and see **EXECUTED TRUST**.

IMPERIALE.—A fine cloth.—*Cowell*.

IMPERATOR.—Emperor. The title of the Roman emperors, and also of the kings of England, before the Norman conquest. Cod. 1, 14, 12; 1 Bl. Com. 242.

Imperii majestas est tutelæ salus (Co. Litt. 64): The majesty of the empire is the safety of its protection.

Imperitia culpæ annumeratur (Jur. Civ.): Want of skill is reckoned as a fault.

Imperitia est maxima mechaniorum pœna (11 Co. 54): Unskillfulness is the greatest fault of mechanics.

IMPERIUM.—Right to command, an attribute of executive power.

Impersonalitas non concludit nec ligat (Co. Litt. 352 b): Impersonality neither concludes nor binds.

IMPERTINENCE — IMPERTINENT.—Under the rules of chancery pleading, impertinence consists in the introduction of long and unnecessary or immaterial allegations into a bill. The plaintiff is liable to pay the costs occasioned thereby. (Dan. Ch. Pr. 291.) Such unnecessary matter is called "impertinent." See **SCANDAL**.

IMPERTINENCE, (in pleading, defined). 4 Johns. (N. Y.) Ch. 437.

IMPERTINENT, (when answer is). 5 Paige (N. Y.) 525.

IMPERTINENT AND SCANDALOUS MATTER, what is). 1 Johns. (N. Y.) Ch. 103.

IMPERTINENT MATTER, (in an answer). 5 Paige (N. Y.) 260, 267.

IMPESCATUS.—Impeached or accused. —*Jacob.*

IMPETITIO.—See IMPEACHMENT.

IMPETRATION. — Acquiring anything by request and prayer.—*Cowell.*

IMPIER.—Umpire (*q. v.*)

IMPIERMENT.—Impairing or prejudicing.—*Jacob.*

IMPIGNORATION.—The act of pawning or putting to pledge.

IMPLEAD.—To sue or prosecute.—*Termes de la Ley.*

IMPLEADED, (in a declaration). Cro. Jac. 10.

IMPLEADED THE DEFENDANT, (in a summons). 2 Hall (N. Y.) 471.

IMPLEMENTS.—Tools, utensils, vessels, or instruments necessary or appropriate to be used in performing any description of work or service, in carrying on a business or trade, in exercising one's vocation. Probably the most important instance of the use of the term in law is in statutes exempting implements of a debtor's trade from execution.—*Abbott.*

IMPLEMENTS, (protected from seizure on execution). 5 Mass. 313, 314.

—— (synonymous with "apparatus"). 9 Bost. L. Rep. 207.

IMPLEMENTS OF GAMING, (game cocks are not). 11 Metc. (Mass.) 79.

IMPLEMENTS OF HOUSEBREAKING, (keys are, within 14 and 15 Vict. c. 19, § 1). 2 Den. C. C. 474.

IMPLEMENTS OF HOUSEHOLD, (in a will). 3 P. Wms. 334.

IMPLEMENTS OF TRADE, (horses and carts are not). 5 Ark. 46; 44 Conn. 93, 99.

IMPLICATA.—In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures on freight at so much per cent., to which they are entitled at all events, even if the adventure be lost. These adventures are called *implicata*.

IMPLICATION—IMPLIED.—

§ 1. An intention, or an act evidencing intention, (such as a promise, request, devise, gift, offer, &c.,) is said to be implied when it does not really exist, but is presumed to exist, *i. e.* the same legal effect is produced as if it did exist. Thus, when a person

goes to an inn with goods, and is taken in by the inn-keeper, the law implies a promise by the inn-keeper to keep his guest's goods safely, subject to certain exceptions, although the inn-keeper may have had no such intention. (Poll. Cont. 28.) Such a promise is sometimes said to be "implied in law" (or to exist in implication of law) in order to distinguish it from implication in the wider sense of the word. *Infra*, § 2.

§ 2. Implication is also used in the sense of inference, *i. e.* where the existence of an intention is inferred from acts not done for the sole purpose of communicating it, but for some other purpose. (Sav. Syst. iii. 242. See EXPRESS.) Thus, if a person orders goods to be sent to him, he impliedly promises to pay for them. Such a promise is more correctly called a tacit promise, to distinguish it from an express promise. So, where a testator gives property to one person in such terms as to show that he meant to give some interest in it to another, the latter takes an interest by implication. Thus, if a testator gives personal property to A. after the death of B., without giving anything to B. expressly, then B. takes a life interest in the property by implication. Wats. Comp Eq. 1271. See *Sweeting v. Prideaux*, 2 Ch D. 413.

§ 3. "Implied" is sometimes applied in both the above senses to the same subject-matter. See CONTRACT; COVENANT; TRUST; WARRANTY; also, CONSTRUCTIVE; EXPRESS; QUASI-CONTRACT; TACIT.

IMPLICATION, (defined). 8 Serg. & R. (Pa.) 496.

—— (effect of, upon express words). Coxe (N. J.) 213.

—— (what is not a gift by). 1 Hare 537.

IMPLICATION, NECESSARY, (what is). 1 Ves. & B. 466.

IMPLIED ABROGATION.—Abrogation by implication; as where a statute contains provisions contrary to those of a former one, without expressly abrogating the latter; or where the reason of a statute, or object for which it was passed, has ceased to exist.

IMPLIED ASSUMPSIT.—An undertaking or promise not formally made, but presumed or implied from the conduct of the party. See ASSUMPSIT, § 1.

IMPLIED CONDITION.—*See* CON-
DITION, § 5.

IMPLIED CONSIDERATION.—A
consideration implied or presumed by law,
as distinguished from an *express* consider-
ation.

IMPLIED CONTRACTS.—These
are of two great classes, either (1) implied
in law, or (2) implied by the law from cir-
cumstances. Those contracts which are
implied in law are, *e. g.* the landlord's right
of distress, these contracts being raised or
given by the law without any (or any
proximate) consideration of the circum-
stances or conduct of the parties; on the
other hand, those contracts which are im-
plied by law from circumstances are, *e. g.*
a contract or promise of marriage, or a
contract of agency, either of which con-
tracts may be implied without any express
engagement and without any writing to
evidence the contract, and solely from the
conduct and dealings of the parties. The
quasi-contracts of Roman law undoubt-
edly comprise all those contracts that are
implied by law from the conduct of the
parties; but it is the opinion of Maine (in
his *Ancient Law*) that they do not com-
prise the contracts which are implied in
law, *sed quære*.—*Brown.* *See* CONTRACTS,
§ 3.

IMPLIED CONTRACTS, (defined). 22 Hun (N.
Y.) 335.

IMPLIED MALICE, (defined). 10 N. Y. 120,
138.

IMPLIED POWER, (of corporation to make by-
laws). 2 P. Wms. 207.

— (of corporation, beyond the control of
subsequent legislation). 9 Wend. (N. Y.) 351.

IMPLIED PROMISES, (corporation liable upon).
1 Cow. (N. Y.) 513.

IMPLIED TRUSTS.—An implied
trust arises generally from an equitable
construction put upon the facts, conduct,
or situation of parties. Implied trusts
have been distributed into two classes:
(1) those depending upon the presumed
intent of the parties, as where property is
delivered by one to another to be handed
over to a third person, the receiver holds
it upon an implied trust in favor of such
third person; (2) those not depending upon
such intention, but arising by operation of
law, in cases of fraud, or notice of an ad-

verse equity. A trust of this kind arises
wherever the estate is converted by the
trustee from one species of property into
another; for if the property in its original
form were invested with a trust, the *cestui
que trust's* interests cannot be affected by
any change of that form; and whether the
conversion be in pursuance or in breach
of the trustee's duty, is immaterial; for
an abuse of trust cannot confer any right
on the party abusing it, or on those who
claim in privity with him.

IMPLIED USE.—*See* RESULTING USE;
USE.

IMPLIED WARRANTY.—*See* WAR-
RANTY.

IMPORTATION.—The bringing
goods and merchandise into one country
from other nations.

IMPORTATION, (what constitutes). 9 Cranch
(U. S.) 104; 1 Gall. (U. S.) 206, 210.

— (when duties on accrue). 13 Pet. (U.
S.) 486, 494.

— (of merchandise, United States laws
relative to landing). 1 Wash. (U. S.) 158.

IMPORTER, (who is not). 8 Wall. (U. S.)
110; 4 Allen (Mass.) 110.

— (in a statute). L. R. 1 C. P. 575.

IMPORTING, (what constitutes). 1 Newb.
Adm. 81, 94.

IMPORTS.—Goods or produce brought
into a country from abroad.

IMPORTS, (defined). 12 Wheat. (U. S.) 437.
— (duty upon). 9 How. (U. S.) 619,

632; 13 Serg. & R. (Pa.) 408.

— (in United States constitution). 8
Wall. (U. S.) 123, 129; 1 Dev. & B. (N. C.) L.
19.

— (persons are not). 4 Metc. (Mass.)
282, 296.

— (when duties upon accrue). 5 Cranch
(U. S.) 368.

IMPORTUNITY.—Urgent solici-
tation, with troublesome frequency and per-
tinacity. Wills and devises are sometimes
set aside in consequence of the importunity
of those who have procured them. When-
ever the importunity is such as to deprive
the devisor of the freedom of his will, the
devise becomes fraudulent and void. (Dane
Abr. c. 127, a. 14, s. 5, 6, 7; 2 Phillim. Ecc.
L. 551, 552.)—*Bouvier.*

**IMPOSED UPON THE PLAINTIFF THE CRIME
OF FELONY**, (in an action for slander). 2 Barn.
& C. 283, 284.

IMPOSITION.—An impost; tax; contribution.

IMPOSSIBILITY.—

§ 1. The question whether an act is possible is of importance in law, with reference to the performance of conditions and agreements. *See* PERFORMANCE.

With reference to the nature of the act required, an impossibility is either physical, legal or logical.

§ 2. **Physical: absolute, relative, or in fact.**—An act is physically impossible when it is contrary to the course of nature. Such an impossibility may be either absolute, *i. e.* impossible in any case (*e. g.* for A. to reach the moon), or relative (sometimes called impossibility in fact), *i. e.* arising from the circumstances of the case, *e. g.* for A. to make a payment to B., he being a deceased person. 3 Sav. Syst. 157, 164; Poll. Cont. 330.

§ 3. **Practical.**—To the latter class belongs what is sometimes called practical impossibility, which exists when the act *can* be done, but only at an excessive or unreasonable cost. Thus, when a ship is so injured that it is not worth while repairing her, the same effect with respect to the liability of the insurer is produced, as if it were physically as well as practically impossible to repair her. Leake Cont. (2 edit.) 682; Poll. Cont. 326; Jones *v.* St. John's College, L. R. 6 Q. B. 115. *See* LOSS.

§ 4. **Legal, or juridical.**—An act is legally or juridically impossible when a rule of law makes it impossible to do it, *e. g.* for A. to make a valid will before his majority. This class of acts must not be confounded with those which are possible, although forbidden by law, as to commit a theft. 3 Sav. 169. *See* ILLEGAL; UNLAWFUL.

§ 5. **Logical.**—An act is logically impossible when it is contrary to the nature of the transaction, as where A. gives property to B. expressly for his own benefit, on condition that he transfers it to C. *Id.* 159; Poll. Cont. 322, 326. *See* REPUGNANCY.

§ 6. **Original.**—With reference to the time when the impossibility first exists, the act may be either originally impossible (*ab initio*), or become impossible by matter subsequent (*ex post facto*). Thus, if A. contracts with B. to pay money into

the hands of C., and C. was dead at the time the contract was entered into, then the payment was originally impossible; if C. was alive at the time, but dies before the payment, it becomes impossible by matter subsequent.

§ 7. **Subsequent.**—The latter class are again divisible according as the performance of the act required is rendered impossible by the person creating the requirement, by the person for whose benefit the act was to be done, by the person required to do it, by a stranger, such as the public enemy (*q. v.*), by the act of God (*q. v.*), by a change in the law, &c. Leake Cont. 692 *et seq.*; Poll. Cont. 330 *et seq.*; Baily *v.* De Crespigny, L. R. 4 Q. B. 180, and the cases there cited.

§ 8. **Effect of impossibility.**—These divisions are important with reference to the effect of non-performance of the impossible act. Thus a contract for the performance of an act which every reasonable person must know to be impossible (as to make a flying machine and fly to the moon with it) is void, (*see* Leake Cont. 686; Clifford *v.* Watts, L. R. 5 C. P. 577; Poll. Cont. 324; 3 Savigny, 162); and an impossible consideration is no consideration. (Chit. Cont. 44.) On the other hand, if a person contracts to do an act which is only impossible from circumstances, (as to build a house in a week, all the workmen in the building trade being on strike, or to pay money when he has none,) the impossibility does not excuse his non-performance except in special cases. (*Ante*, § 3. Thom *v.* Mayor of London, L. R. 9 Ex. 163, 10 Ex. 112; 1 App. Cas. 120; Thomborow *v.* Whitacre, 2 Ld. Raym. 1164; Poll. Cont. 330.) Again, if the act becomes impossible by the act or default of the promisor, not only does this not excuse him, but it operates as a breach of his contract, although the time for performance may not have arrived (Poll. Cont. 345); while if it becomes impossible by the act of the person for whose benefit it was to be done, the promisor is discharged from performance. All these rules, however, are subject to the intention appearing from the whole transaction. *See, also*, 1 Savigny Oblig. 381 *et seq.*, and with reference to legacies, &c., Wats. Eq. 1233. *See* CONDITION, §§ 8, 10.

Impossibilium nulla obligatio est (D. 50, 17, 185): There is no obligation to do impossible things.

IMPOST.—Any tax or tribute imposed by authority; particularly a tax or duty laid by government on goods imported.

IMPOST, (defined). Story Const. L. § 949.
— (in United States constitution). 3 Dall. (U. S.) 171.

— (to what applied). 12 Wheat. (U. S.) 456.

IMPOST TAX, (defined). 9 Rob. (La.) 333.

IMPOSTS, (validity of law prohibiting). 12 Wheat. (U. S.) 437.

— (what are). Davies 32.

IMPOTENCE, or IMPOTENCY.—

Physical inability of a man or woman to perform the act of sexual intercourse. A marriage is voidable if, at the time of the celebration, either of the parties to it is incurably impotent, and may be declared void by a decree in a suit of nullity of marriage. A defence of impotency is sometimes set up by prisoners indicted for rape. Very nice questions as to the legitimacy of children have been contested on issues as to impotence. The medical jurists have classed the subject, as to the male, into absolute, curable, and temporary; as to the female, into curable and incurable. See Beck Med. Jur. 52.

IMPOTENCE, (not equivalent to idiocy as a cause for divorce). 4 Wheel. Am. C. L. 518.

— (when court may decree marriage void for). 5 Paige (N. Y.) 554.

— (when court will not decree marriage void for). 6 Paige (N. Y.) 175.

Impotentia excusat legem (Co. Litt. 29): The impossibility of doing what is required by the law excuses from the performance.

IMPOTENTIAM, PROPERTY PROPTER.—A qualified property, which may subsist in animals *feræ naturæ*, on account of their inability, as where hawks, herons or other birds build in a person's trees, or cones, &c., make their nests or burrows in a person's land, and have young there, such person has a qualified property in them till they can fly or run away, and then such property expires. 2 Steph. Com. (7 edit.) 8.

IMPOUND.—In its literal sense, to impound is to put distrained cattle or other goods in a pound (*q. v.*), and as this is done to keep them as security, the term is also applied to cases where a document, money or other property is set apart to be kept in safety until some condition is

fulfilled or some question is decided. See *In re Westbourne Grove Drapery Co.*, 5 Ch. D. 248.

IMPREScriptable RIGHTS.—

Such as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.

IMPRESSION.—See **PRIME IMPRESSIONIS**.

IMPRESSMENT.—A power possessed by the English crown of taking persons or property to aid in the defence of the country, with or without the consent of the persons concerned. It is usually exercised to obtain hands for the queen's ships in time of war, by taking seamen engaged in merchant vessels, (1 Bl. Com. 420; Maud & P. Mer. Sh. 123;) but in former times impressment of merchant ships was also practiced. (*Id. n. (r).*) The admiralty issues protections against impressment in certain cases, either under statutes passed in favor of certain callings (*e. g.* persons employed in the Greenland fisheries) or voluntarily. *Id.* 124, 125.

§ 2. Under the Army Discipline Act, 1879, power is given of impressing carriages, animals and drivers required for moving military baggage and stores.

IMPREST-MONEY.—In English law, money imprested or advanced by the crown for the purpose of being employed for its use. (Man. Exch. Pr. 17; 13 Eliz. c. 4; 1 Mad. Exch. c. 10, § 13, p. 387; 6 Price 424a.) The term is not wholly obsolete. See the Public Revenues Acts of New Zealand, 1872, 1873.

IMPRETIABILIS.—Invaluable.

IMPRIMATUR.—A license to print or publish.

IMPRIMERY.—A print or impression.—*Jacob*.

IMPRIMIS.—In the first place.

IMPRIMIS, (effect of, in a will). 1 Halst. (N. J.) 137; 59 Me. 325; 3 Pa. 386; 4 Madd. 168.

IMPRISII.—Adherents or accomplices.

IMPRISONED, (infant in the arms of its mother is not). 2 Mass. 110.

— (in insolvent act). 2 East 152.

— (in a statute). 19 Kan. 171.

— (in revised statutes). 26 How. (N. Y.) Pr. 89.

IMPRISONMENT.—

§ 1. **Criminal law.**—Imprisonment, as a punishment, consists in the detention of an offender in prison and in his subjection to the discipline appointed for prisoners

during the period expressed in the sentence. In England it is of three kinds, imprisonment with hard labor, imprisonment without hard labor (in either case with or without solitary confinement), and imprisonment "as a misdemeanor of the first division." In the latter case the offender is not deemed to be a criminal prisoner; he is permitted to procure or receive food, wine, clothing, &c., and to follow his trade or profession, subject to certain restrictions. (Steph. Cr. Dig. 2 *et seq.*; 1 Russ. Cr. 78 *et seq.*; Stat. 28 and 29 Vict. c. 126.) This latter kind of imprisonment is not known in the United States. See PENAL SERVITUDE.

§ 2. **For debt.**—Imprisonment is also in some cases a mode of executing a judgment for payment of a sum of money. For this purpose the plaintiff issues a writ of *capias ad satisfaciendum* (*q. v.*) When the defendant is once arrested the judgment cannot be enforced against the defendant's property, and when he is discharged the debt is satisfied.

§ 3. **Disability.**—Formerly, in England, imprisonment was a disability, in certain cases, which prevented the Statutes of Limitation from running against the person imprisoned, but this is no longer so. Stat. 19 and 20 Vict. c. 97, § 10; Shelf. R. P. Stat. 187, 293.

IMPRISONMENT, (defined). 1 Baldw. (U. S.) 239; 36 Ark. 74, 78; 3 Harr. (Del.) 416.

—— (constitutionality of laws releasing insolvent debtors from). 9 Pet. (U. S.) 330.

—— (includes an arrest). 2 Ld. Raym. 1099.

—— (when an excess of inhumanity). 4 Wheat. (U. S.) 200.

—— (what is, to support action of trespass). 2 Car. & P. 361, 362.

—— (what is not). 40 Wis. 328; 1 Esp. 431; 3 Bl. Com. 127, n. 14.

IMPRISONMENT FOR DEBT, (discharge from lawful). 12 Wheat. (U. S.) 370.

IMPRIST.—Those who side with or take the part of another, either in his defence or otherwise.

IMPROBATION.—In the Scotch law, the disproving or setting aside of deeds and writings *ex facie probante* on the ground of falsehood or forgery.—*Bell Dict.*

IMPROPER, (synonymous with "immoral," and "illegal"). 48 N. H. 199.

IMPROPER CONDUCT, (defined). 48 N. H. 214.

IMPROPER FEUDS.—Derivative feuds; as, for instance, those that were originally bartered and sold to the feudatory for a price, or were held upon base or less honorable services,

or upon a rent in lieu of military service, or were themselves alienable, without mutual license, or descended indifferently to either males or females. 1 Steph. Com. (7 edit.) 180.

IMPROPRIATION — IMPROPRIA

TOR.—Said to be derived from the Latin *in propriatam*, because the living is held as a lay property. Phillim. Ecc. L. 275.

Impropriation is where a rectory or tithes belong to a lay person called the "impropriator." In the case of a rectory, the impropriator or lay rector is bound to provide for the cure of souls by appointing either a vicar or a perpetual curate. 1 Bl. Com. 386; Phillim. Ecc. L. 276. See APPROPRIATION, § 7.

IMPROVE.—In Scotch law, to disprove; to invalidate or impeach; to prove false or forged.

IMPROVE, (synonymous with "cultivate"). 4 Cow. (N. Y.) 203.

IMPROVE AND MANAGE THE ESTATE, (in a will). 14 Wend. (N. Y.) 359.

IMPROVE THE COURSE OR PATH OF THE ROAD, (in turnpike act). 2 Barn. & C. 703.

IMPROVED LAND, (defined). 8 Allen (Mass.) 213; 4 Cow. (N. Y.) 203.

IMPROVED MACHINE, (patent for). Fess Pat. 150.

IMPROVED PROPERTY, (under road laws). 68 Pa. St. 396.

IMPROVED RENT, (in a statute). 1 Bos. & P. 305, 306.

IMPROVEMENT.—

§ 1. **In the law of public lands.**—An act by which a locator or settler expresses his intention to cultivate or clear certain land; an act expressive of the actual possession of land; as by erecting a cabin, planting a corn-field, deadening trees in a forest; or by merely marking trees, or even by piling up a brush-heap.—*Burrill*.

§ 2. **In the law of patents.**—An addition to, or modification of, a previous invention or discovery, intended or claimed to increase its utility or value. See 2 Kent Com. 366–372.

IMPROVEMENT, (defined). 5 Dana (Ky.) 547.

—— (as synonymous with "settlement"). 3 Yeates (Pa.) 71; 4 *Id.* 330.

—— (devise of). 2 Yeates (Pa.) 378.

—— (distinguished from "settlement"). 4 Binn. (Pa.) 218.

—— (in act of February, 17th, 1858). 72 Pa. St. 355, 357.

—— (in city charter). 10 Vr. (N. J.) 257.

—— (in mechanics' lien act). 34 Iowa 559; 70 Pa. St. 98.

—— (in patent law). 3 Wheat. (U. S.) 454; 7 *Id.* 420; 13 Wend. (N. Y.) 385.

—— (in State constitution). 32 Iowa 254.

—— (in a will). 2 Mass. 61; 4 Pick. (Mass.) 198, 204; 11 *Id.* 371, 376.

—— (to give pre-emption right to land) 3 Pa. 436.

IMPROVEMENT OF LAND ACTS.

—By the English Improvement of Land Act, 1864, any person in the possession or receipt of the rents or profits of land (not being a tenant under an unrenewable lease for life or years) may, with the sanction of the enclosure commissioners, borrow or advance money for the execution of certain improvements on the land, and obtain an order charging the amount, with interest, on the inheritance or fee of the land. The amount constitutes a rent-charge payable half yearly over the period of years fixed by the order, in respect of principal and interest combined. The improvements authorized by the act include works of drainage, irrigation, embankment, reclamation, clearing and planting of land, and the construction of roads, farm and agricultural buildings, jetties, &c. The Limited Owners Residences Acts, 1870 and 1871, added to this list of improvements the erection of a mansion-house, with the usual and necessary outbuildings, &c., and the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877, added to it the construction or erection of reservoirs or other permanent works for the supply of water.

IMPROVEMENTS, (defined). 1 Chit. Gen. Pr. 174.

— (what are). 2 Moo. & Sc. 25, 31.

— (by mortgagor). Sax. (N. J.) 139, 140.

— (distinguished from the increased value to land). 10 Wend. (N. Y.) 484, 486.

— (dower in). 9 Mass. 218; Penn. (N. J.) 697.

— (in act concerning roads). 3 Harr. (N. J.) 423.

— (in a covenant). 16 How. (N. Y.) Pr. 220; 1 Chit. Gen. Pr. 94.

— (in a lease). 1 Gr. (N. J.) Ch. 390.

— (in a will). 1 Cush. (Mass.) 93; 2 Gr. (N. J.) 66; 7 Cow. (N. Y.) 354; 4 Ves. 542.

— (in mechanics' lien law). 70 Pa. St. 100.

IMPROVEMENTS TO LAND, (in a contract to sell). 22 Barb. (N. Y.) 260.

— (in statute of frauds). 5 Johns. (N. Y.) 272; 11 Id. 147.

IMPROVEMENTS WHICH MIGHT BE ERECTED, (in a covenant). 2 Stark. 403.

IMPROVIDENCE, (in a statute). 1 Barb. (N. Y.) Ch. 45; 14 N. Y. 449.

IMPRUIAMENTUM. — The improvement of land.

IMPRUIARE. — To improve land. — *Cowell*.

Impunitas continuum affectum tribuit delinquendi (4 Co. 45): Impunity confirms the disposition to commit crime.

Impunities semper ad deteriora invitāt (5 Co. 109): Impunity always invites to greater crimes.

IMPUNITIVE DAMAGES, (held unintelligible). 36 Tex. 153.

IMPUTATIO. — In the civil law, legal liability.

IN, (when synonymous with "of"). 12 Serg & R. (Pa.) 205.

IN ACTION. — A thing is said to be in action when it is not in possession, and for its recovery an action is necessary. 2 Bl. Com. 396. See **CHOSE IN ACTION**.

IN ACTUAL MILITARY SERVICE, (confined to those who are on an expedition). 7 Eng. Eccl. 496, 506.

IN ACTUAL SERVICE, (in a statute). 53 Me. 561.

IN ADDITION, (in a will). 4 Hare 218; 8 Jur. 705, 708.

IN ADDITION TO, (as used in a statute). 14 Bush (Ky.) 625.

IN ADVERSUM. — A decree is said to be *in adversum* when it is against an adverse or resisting party, *i. e.* a decree not by consent. 3 Story (U. S.) 318.

In ædificiis lapis male positus non est removendus (11 Co. 69): A stone badly placed in buildings is not to be removed.

In æquali jure melior est conditio possidentis (Plowd. 296): In equal right the condition of the possessor is best.

IN ALIO LOCO. — In another place.

IN ALL THE MONTH OF MAY, (in a bond). 3 Wash. (U. S.) 140.

In alta proditiōe nullus potest esse accessorius sed principalis solummodo (3 Inst. 138): In high treason no one can be an accessory, but only principal.

In alternativis electio est debitoris: In alternatives the debtor has the election.

In ambigua voce legis ea potius accipienda est significatio quæ vitio caret, præsertim cum etiam voluntas legis ex hoc colligi possit (D. 1, 3, 19; Bac. Max. reg. 3): In an ambiguous expression of law, that signification is to be preferred which is consonant with equity, especially when the spirit of the law can be collected from that.

In ambiguis cassibus semper præsumitur pro rege: In doubtful cases the presumption is always in favor of the king.

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset (D. 50, 17, 96): In ambiguous expressions, the intention of the person using them is chiefly to be regarded.

In Anglia non est interregnum (Jenk. Cent. 205): In England there is no interregnum.

In arbitrium judicis: At the pleasure of the judge.

IN ARCTA ET SALVA CUSTODIA. — In close and safe custody.

IN ARTICULO MORTIS.—At the point of death.

In atrocioribus delictis punitur affectus licet non sequatur affectus (2 Roll. 82): In more atrocious crimes the intent is punished, though an effect does not follow.

IN AUTER, or AUTRE, DROIT.—In another's right.

IN BANCO, or BANC.—See BANC.

IN BANK NOTES CURRENT IN NEW YORK, (in a statute). 19 Johns. (N. Y.) 146.

IN BLANK.—An indorsement of a bill or note, consisting merely of the indorser's name. (2 Steph. Com. 164.) Called "blank," from the blank space left over it.

IN BONIS.—Among the goods, or property; in actual possession. Inst. 4, 2, 2.

IN BRICKS, (in a contract). 3 Bouv. Inst. 629 n.

IN CAMERA.—In England, a case is said to be heard *in camera* when the judge either hears it in his private room, or causes the doors of the court to be closed, and all persons, except those concerned in the case, to be excluded. This is done where it is in the public interest that the facts of the case should not be published, especially in divorce cases, but it is not clear whether the court can do so as a matter of course in any case. See *Nagle Gillman v. Christopher*, 4 Ch. D. 173.

IN CAPITA.—Among heads. According to the number of individuals, or to the polls.

IN CAPITE, IN CHIEF, or EN CHIEF: originally meant "directly," "immediately," *sine medio, sans mesne*. (Madox Bar. Ang. 164.) Hence "tenure *in capite*" primarily means the tenure of very lord and very tenant (*q. v.*), or the relation between a tenant and his immediate feudal superior, as opposed to a mesne tenure, (Britt. 100 a; see MESNE); but the phrase was always applied especially to land held directly of the crown, (Co. Litt. 108 a; Wright Ten. 161,) and at the present day it is used exclusively in that sense. See TENURE.

§ 2. Tenure *in capite*, however, even when confined to the crown, is an ambiguous expression. Formerly land might be held directly of the king in three manners: First, it might have been originally granted to the tenant by the king in his capacity of king or lord paramount; this was called tenure *ut de coronâ*; secondly, an honor, castle or manor held by a private person might come into the hands of the crown (*e. g.* by escheat), so that the persons holding lands of the honor became tenants of the king in his capacity of lord of the honor; this was called tenure *ut de honore*; thirdly, if A. held land of B., a private person, in gross, and B.'s seignioriness escheated to the crown, then A. became tenant of the king,

not in his capacity of king, but as if he were an ordinary mesne lord; this was called tenure *ut de personâ*. These distinctions were formerly important, for tenure *ut de coronâ* involved many burthensome incidents which tenants of the king by tenure *ut de honore* and *ut de personâ* were free from, because they did not become tenants of the king by their own free will. (See LIVERY.) Originally each of these tenures was called a tenure *in capite*, but about Henry VIII.'s reign the term *in capite* ceased to be applied to tenure *ut de honore* and *ut de personâ*, (so where the king was lord of an ancient borough, the tenants in burgage were not called tenants in socage *in capite* (Co. Litt. 77 a,) and became appropriated to tenure *in capite ut de coronâ*, and it is this tenure to which the act 12 Car. II. refers when it abolishes tenure *in capite*. At the present day, therefore, there is no distinction between tenures of the crown. See Co. Litt. 77 a, 108 a, and Hargrave's notes. Mr. Madox's remarks on this subject are singularly narrow-minded.

IN CAPITE, TENURE (in a statute). Davies 160.

IN CASE, (in a will). 8 Pet. (U. S.) 348; 59 Pa. St. 70.

IN CASE ANY SHOULD DIE, (in a will). 4 Munf. (Va.) 328.

IN CASE OF A LOSS OR DISPUTE, (in an insurance policy). 1 Wils. 129.

IN CASE OF DEATH, (in a will). L. R. 8 Eq. 52; 1 Swanst. 162, 164.

In casu extremæ necessitatis omnia sunt communia (Hale P. C. 54): In cases of extreme necessity, everything is in common.

IN CHIEF.—See EXAMINATION, § 3.

In claris non est locus conjecturis: In things obvious there is no room for conjecture.

IN COMMENDAM.—See COMMENDAM.

In commodato hæc pactio, ne dolus præstetur, rata non est (D. 13, 7, 17): In the contract of loan, a stipulation not to be liable for fraud is not valid.

IN COMMUNI.—In common.

In conjunctivis oportet utramque partem esse veram (Wing. 13): In things conjunctive, each part ought to be true.

IN CONSIDERATION OF, (in a covenant). 1 East 619.

IN CONSIDERATION THEREOF, (in a covenant). 7 Mod. 236; 8 Id. 41, 42.

In consimili casu, consimile debet esse remedium (Hard. 65): In similar cases the remedy should be similar.

In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda (Co. Litt. 141): In customs, not the length of time, but the strength of the reason, should be considered.

In *contractibus benigna*; in *testamentis, benignior*; in *restitutionibus, benignissima interpretatio facienda est* (Co. Litt. 112): In contracts the interpretation is to be liberal; in wills, more liberal; in restitutions, most liberal.

In *contractibus tacite insunt quæ sunt moris et consuetudinis*: Those things which are of manner and custom are tacitly imported into contracts.

In *conventionibus contrahentium voluntas potius quam verba spectari placuit* (Br. Max. (5 edit.) 551): In agreements, the intention of the parties, rather than the words actually used, should be regarded.

IN COTTON, (obligation to pay). 3 Bouv. Inst. 629 *n*.

IN COURT, (offer filed in vacation, held to be made). 97 Mass. 150

In *criminalibus sufficit generalis malitia intentionis cum facto paris gradus* (Bac. Max. reg. 15; D. 47, 10, 18, s. 3): Bacon observes, "All crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact, which, though it be not the fact at the which the intention of the malefactor leveled, yet the law giveth him no advantage of the error, if another particular ensue of so high a nature."

IN *CUJUS REI TESTIMONIUM*.—In testimony whereof. The initial words of the concluding clause of ancient deeds in Latin, literally translated in the English forms.

IN CURRENT BANK NOTES, (in a contract). 1 Ohio 178.

—— (note made payable). 1 Ohio 531; 3 Bouv. Inst. 629 *n*.

IN *CUSTODIA LEGIS*.—In the keeping of the law.

IN DEFAULT OF SUCH ISSUE, (in a devise). 7 East 522.

IN *DELICTO*.—In fault. See *IN PARI DELICTO*, &c.

In *disjunctivis sufficit alteram partem esse veram* (Wing. 13): In things disjunctive, it suffices should either part be true.

In *dubiis, magis dignum est accipiendum* (Branch Pr.): In doubtful cases, the more worthy is to be accepted.

In *dubiis, benigniora præferenda sunt* (D. 50, 17, 56): In doubtful cases, the more favorable views are to be preferred.

In *dubiis, non præsumitur pro testamento* (Branch Pr.): In cases of doubt, the presumption is not in favor of a will.

In *dubio, hæc legis constructio quam verba ostendunt* (Jur. Civ.): In a doubt-

ful point, the construction which the words point out is the construction of the law.

IN *EADEM CAUSA*.—In the same state or condition.—*Calv. Lex*.

IN *EMULATIONEM VICINI*.—In envy of a neighbor. Thus, where an action is brought, solely to hurt or distress another, it is said to be *in emulationem vicini*. 1 Kames Eq. 56.

In *eo quod plus sit, semper inest et minus* (Dig. 50, 17, 110): In that which is greater is always included the less also.

IN *ESSE*.—Actually existing. Distinguished from *in posse*, which means, "that which is not, but may be." A child before birth is *in posse*; after birth, *in esse*.

In *esse potest donationi, modus, conditio, sive causa; ut, modus est; si, conditio; quia, causa* (Dyer 138): In a gift there may be a manner, condition, or cause; *ut*, introduces a manner; *si*, a condition; *quia*, a cause.

IN EXECUTION AND PURSUANCE OF, (synonymous with "to effect the object of"). 7 Biss. (U. S.) 129.

IN *EXTENSO*.—From beginning to end, leaving out nothing.

IN *EXTREMIS*.—At the last gasp. Used of a person about to die.

IN *FACIE CURIÆ*.—In the face of the court. Dyer 28.

IN *FACIE ECCLESIAE*.—In the face of the church. A term applied, in the law of England, to marriages, which are required to be solemnized in a parish church or public chapel, unless by dispensation or license. (1 Bl. Com. 439; 2 Steph. Com. 288, 289.) Applied, in Bracton, to the old mode of conferring dower. (Bract. 92; 2 Bl. Com. 133).—*Burrill*.

IN *FACIENDO*.—In doing, or infeasance.

In *facto quod se habet ad bonum et malum magis de bono quam de malo lex intendit* (Co. Litt. 78): In an action which addresses itself to good and bad, the law looks more to the good than to the bad.

In *favorabilibus, magis attenditur quod prodest quam quod nocet* (Bacon): In things favored, what does good is more regarded than what does harm.

IN *FAVOREM LIBERTATIS, VEL VITÆ*.—In favor of liberty or life.

IN FEE, (in a will). 4 Rawle (Pa.) 118.

IN FEE-SIMPLE, (in a will). Reeve Dom. Rel 487.

In fictione juris semper æquitas existit (11 Co. 51): In the fiction of law there is always equity.

IN FIERI.—In course of accomplishment.

IN FORMA PAUPERIS.—In the form (or character) of a poor person. Under the statute 11 Hen. VII. c. 12, and 23 Hen. VIII. c. 15, § 3, every poor person desirous of bringing an action, who can swear that he has not property worth £5, except his wearing apparel and the subject-matter of the intended action, is to be allowed to bring his action without payment of the court fees, and is to have an attorney and counsel assigned to him, who act for him without payment. (Smith Ac. 96; Chit. Pr. 1289. As to the mode of obtaining leave, see Coe Pr. 170.) The practice of the Common Law Courts, under these acts, was adopted by the Courts of Equity, and was extended by them to the case of defendants. (Dan. Ch. Pr. 38. As to the practice in divorce cases, see Browne Div. 249, and in criminal cases, Arch. Cr. Pl. 150.) It would, therefore, appear that the rule as thus extended, is the practice of the High Court. Similar statutory provisions are in force in many, if not all, of the States. See DISPAUPER; DIVES.

IN FORO CONSCIENTIÆ.—In the tribunal of conscience; conscientiously; considered from a moral rather than a legal point of view.

IN FRAUDEM LEGIS.—In fraud of the law.

IN FULL COMPENSATION, (in United States revised statutes). 15 Ct. of Cl. 323.

IN FULL OF ALL DEBTS, DEMANDS, JUDGMENTS, EXECUTIONS AND ACCOUNTS OF WHATSOEVER NATURE IN LAW OR EQUITY, (in a release). 1 Cow. (N. Y.) 122.

IN FULL RECEIPT, (when conclusive evidence). 1 Esp. 174.

IN FULLEST CONFIDENCE, (in a will). Turn. & R. 143, 157.

IN FUTURO.—In the future: the opposite of *in præsentî* (q. v.)

IN GREMIO LEGIS.—In the bosom or protection of the law.

IN GROSS.—In bulk, or by the quantity. As applied to a right, this phrase means that it is not appendant, appurtenant, or otherwise annexed to land. Thus,

if A. grants to B. the right of feeding a certain number of cattle on his (A.'s) lands, B. has a common of pasture in gross. Elt. Com. 76; Co. Litt. 122a. See COMMON, § 9; EASEMENT, § 1, n.; PROFIT.

§ 2. In the old books, money payable by a mortgagor of land is said to be "in gross," as opposed to a rent issuing out of the land; and hence a mortgagor must tender the money to the person of the mortgagee, while it is sufficient to tender rent on the land itself. Co. Litt. 210a; Litt. § 341. As to powers in gross, see POWER.

IN HAC PARTE.—In this behalf; on this side.

IN HÆC VERBA.—In these very words.

In hæredes non solent transire actiones quæ pœnales ex maleficio sunt (2 Inst. 442): Penal actions, arising from anything of a criminal nature, do not pass to heirs.

IN HER OWN RIGHT, (deed to married woman). 105 Mass. 486.

In his quæ de jure communi omnibus conceduntur, consuetudo alicujus patriæ vel loci non est allegenda (11 Co. 85): In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.

IN INITIO.—In, or at the beginning; *in initio litis*, at the beginning, or in the first stage of the suit. Bract. 400.

IN INVIDIAM.—To excite a prejudice.

IN INVITUM.—Against an unwilling party.

In judicio non creditur nisi juratis (Cro. Car. 64): In a trial, credence is given only to those who are sworn.

In jure non remota causa sed proxima spectatur (Bac. Max. reg. 1): In law, the proximate, and not the remote cause, is regarded.

IN LIKE MANNER, (in a statute). 79 N. C. 372, 387.

IN LIMINE.—At the outset; preliminary.

IN LOCO PARENTIS.—

§ 1. A person is said to be *in loco parentis* toward an infant when he assumes towards the latter the moral obligation of making such a provision for him as his father would in duty be bound to make. The assumption of the character may be, and generally is, implied from the acts of the person putting himself *in loco parentis*, as where he pays for the maintenance and

education of the infant, or establishes him in life. (*Powys v. Mansfield*, 3 Myl. & C. 359; *Simp. Inf.* 250.) The fact that the father of the child is living does not prevent another person putting himself *in loco parentis*, but if the child resides with the father, and is maintained by him, it affords an inference, though not a conclusive one, against the assumption of the character by another person. *Id.* 252.

§ 2. A person *in loco parentis* is for many purposes treated as if he were the parent of the infant. Therefore, the presumption in favor of advancement, (as to which, see *ADVANCEMENT*, § 3,) and the presumption in favor of maintenance out of a contingent or deferred portion, apply to such persons. *Id.* 176, 246.

IN majore summa continetur minor (5 Co. 115): In the greater sum of money is contained the less.

IN MALAM PARTEM.—In a bad sense, so as to wear an evil appearance.

In maleficiis voluntas spectatur non exitus (D. 48, 8, 14): In evil deeds regard must be had to the intention and not to the result.

IN MANNER AFORESAID, (in a will). 5 Ves. 465.

IN MANNER AND FORM FOLLOWING, THAT IS TO SAY, (in an indictment). 1 Chit. Cr. L. 234.

In maxima potentia minima licentia (Hob. 159): In the greatest power there is the smallest license.

IN MEDIAS RES.—Into the heart of the subject, without preface or introduction.

IN MISERICORDIA.—In mercy; subject to amercement; liable to a penalty in the discretion of the king, lord or judge.

IN MITIORI SENSU.—In the milder or more favorable acceptance. Hob. 77 b.

IN MODUM ASSISÆ.—In the manner or form of an assize. Bract. 183 b.

IN MONEY OR NEGROES, (covenant to pay). 4 Bibb (Ky.) 97.

IN MORA.—In delay. In the civil law, a borrower who omits or refuses to return the thing loaned at the proper time is said to be *in mora*. Story Bailm. §§ 254, 259.

IN MORTUA MANU.—In a dead hand; in the hands of a person dead in law, as ecclesiastical bodies anciently were; in mortmain. (1 Bl. Com. 479; Co. Litt. 2 b.)—*Burrill*.

IN NOMINE DEI, AMEN.—In the name of God, Amen. A solemn introduction, anciently used in wills and many other instruments. The translation is often used in wills at the present day.

IN NORTH CAROLINA BANK NOTES, (note payable). 3 Bouv. Inst. 629 n.

IN NOTIS.—In the notes.

In novo casu, novum remedium apponendum est (2 Inst. 3): A new remedy is to be applied to a new case.

IN NUBIBUS.—In the clouds; in abeyance; in suspension; in the custody of the law. In cases where property is in abeyance, the inheritance is figuratively said to be *in nubibus*, or *in gremio legis*.—*Abbott*.

IN NULLO EST ERRATUM.—In nothing is there error. The common plea or joinder in error, denying the existence of error in the record or proceedings. 2 Tidd Pr. 1173.

In obscuris, inspicere solere quod verisimilius est, aut quod plerumque fieri solet (D. 50, 17, 114): In obscure cases, we usually look at what is most probable, or what most commonly happens.

In obscuris, quod minimum est sequimur (D. 50, 17, 9): In obscure cases, we follow that which is the least.

In odium spoliatoris omnia præsumuntur (1 Vern. 19): All things are presumed against a despoiler.

IN OFFICE, (in New York laws, 1870, ch. 382, § 3). 83 N. Y. 372.

In omni re nascitur res quæ ipsam rem exterminat (2 Inst. 15): In every thing a thing is born which destroys that thing itself.

In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur: In all contracts, whether nominate or innominate, an exchange is implied.

In omnibus obligationibus in quibus dies non ponitur, præsentis die debetur (D. 50, 17, 14): In all obligations in which a date is not put, the debt is due on the present day.

In omnibus pœnalibus judiciis et ætati et imprudentiæ succurritur (D. 50, 17, 108): In all penal sentences age and imprudence should be borne in mind.

In omnibus quidem, maxime tamen in jure, æquitas spectanda sit (D. 50, 17, 90): In everything, but especially in law, equity is to be regarded.

IN OR NEAR, (in a will). 1 J. B. Moo. 274 279; 7 Taunt. 553, 557.

IN PACATO SOLO.—In a country which is at peace.

IN PAIS.—*Pais* means "country." It is not clear whether the phrase originally signified that the transaction in question took place on the spot, as in the case of a feoffment, which required livery of seisin on the land itself, or whether it denoted any place not being a court. See COUNTRY.

§ 1. This phrase, as applied to a legal transaction, primarily means that it has taken place without legal proceedings. Thus, a widow was said to make a request *in pais* for her dower when she simply applied to the heir without issuing a writ. (Co. Litt. 32b.) So conveyances are divided into those by matter of record and those by matter *in pais*. See CONVEYANCES. See, also, a similar distinction between forfeitures in Co. Litt. 251a.

§ 2. In some cases, however, "matters *in pais*" are opposed not only to "matters of record," but also to "matters in writing," *i. e.* deeds, as where estoppel by deed is distinguished from estoppel by matter *in pais*. *Id.* 352a. See ESTOPPEL, §§ 3, 4.

In pari causa possessor potior haberi debet (D. 50, 17, 128, § 1): In an equal cause he who has the possession should be preferred.

In pari delicto, potior est conditio possidentis: In equal fault, the condition of the possessor is the more favorable. Where both parties are equally in the wrong, the defendant holds the stronger ground. The law will take notice of an illegal transaction, to defeat a suit, not to maintain one.

IN PARI DELICTO, POTIOR EST CONditio POSSIDENTIS, (applied). 124 Mass. 205.

IN PARI MATERIA.—In an analogous case or position.

IN PARI MATERIA, (statutes, defined). 9 Barb. (N. Y.) 161; 7 How. (N. Y.) Pr. 241, 245.

IN PERFECT ORDER, (used of a house). 9 Cush. (Mass.) 242, 246.

IN PERPETUAM REI MEMORIAM.—In perpetual memory of a thing.

IN PERPETUUM REI TESTIMONIUM.—In perpetual testimony of a matter.

IN PERSON.—A party, plaintiff or defendant, who sues out a writ or other process, or appears to conduct his case in court himself, instead of through solicitor or counsel, is said to act and appear in person. Any suitor, but one *suus in formâ pauperis*, may do this.

IN PERSONAM—IN REM.—

§ 1. **Roman law.**—In the Roman law, from which they are taken, the expressions *in rem* and *in personam* were always opposed to one another, an act or proceeding *in personam* being one done or directed against or with reference to a specific person, while an act or proceeding *in rem* was one done or directed with reference to no specific person, and consequently against or with reference to all whom it might concern, or "all the world." (5 Sav. Syst. 24, n. (a), citing 2 Dig. 14, fr. 7, § 8, fr. 57, § 1; 39 *Id.* 1, fr. 10; 4 *Id.* 2 fr. 9, § 1.) The phrases were especially applied to actions, an *actio in personam* being the remedy where a claim against a specific person arose out of an obligation, whether *ex contractu* or *ex maleficio*, while an *actio in rem* was one brought for the assertion of a right of property, easement, status, &c., against one who denied or infringed it. 4 Just. Inst. 6, § 1; 4 Gaius 1; 5 Sav. 13 *et seq.*; Vang. Pand. § 113.

§ 2. **Rights.**—From this use of the terms they have come to be applied to signify the antithesis of "available against a particular person" and "available against the world at large." Thus, *jura in personam* are rights primarily available against specific persons, *jura in rem* rights only available against the world at large. See RIGHT.

§ 3. **Judgments.**—So a judgment or decree is said to be *in rem* when it binds third persons; such is the sentence of a Court of Admiralty on a question of prize, or a decree of nullity or dissolution of marriage, (2 Sm. Lead. Cas. 699; *Castrique v. Imrie*, L. R. 4 H. L. 414; see JUDGMENT,) or a decree of a court in a foreign country as to the status of a person domiciled there. *Doglioni v. Crispin*, L. R. 1 H. L. 301.

§ 4. **Proceedings.**—Lastly the terms are sometimes used to signify that a judicial proceeding operates on a thing or a person. Thus, it is said of the Court of Chancery that it acts *in personam* and not *in rem*, meaning that its decrees operate by compelling defendants to do what they are ordered to do, and not by producing the effect directly. Hence, such courts have jurisdiction to deal with a question affecting land situate in a foreign country, if the question can be settled by enforcing

the decree or order against a person within the jurisdiction. (*Penn v. Lord Baltimore*, 1 Ves. 444; 2 White & T. Lead. Cas. 837.) The court has gone so far as to foreclose a mortgagor's equity of redemption in land situate abroad. *Paget v. Ede*, L. R. 18 Eq. 118. See, also, *Brinsmead v. Harrison*, L. R. 6 C. P. 588, deciding that an action of trover is not a proceeding *in rem*.

§ 5. **Admiralty actions.**—It is in this sense that admiralty actions are divided into actions *in rem* and *in personam*, an action *in rem* being one in which the ship or other property out of which the cause of action arises (the *res*) is arrested as security for the performance of an obligation, while in an action *in personam* the performance of the obligation can only be enforced against the defendant personally. See *The Charkieh*, L. R. 4 A. & E. 59. See ACTION, §§ 12, 13; INFORMATION, § 11.

IN PHILADELPHIA FUNDS, (note payable). 3 Bouv. Inst. 629 n.

IN PLENO LUMINE.—In public; in common knowledge; in the light of day.

In *pœnalibus causis benignius interpretandum est* (D. 50, 17, 155, § 1): In penal causes the interpretation ought to be the more favorable.

IN POSSE.—In a state of possibility. See IN ESSE.

IN POSSESSION, (in a will). L. R. 5 H. L. 532.

In *præparatoriis ad iudicium favoretori* (2 Inst. 57): In things preceding judgment the plaintiff is favored.

IN PRÆSENTI.—At the present time.

In *præsentia majoris cessat potentia minoris* (Jenk. Cent. 214): In the presence of the major the power of the minor ceases.

IN PRIMIS.—In the first place. A phrase used in argument.

IN PRINCIPIO.—At the beginning.

IN PRISON FOR DEBT, (in bankruptcy act). L. R. 3 Ch. 240.

IN PROMPTU.—In readiness; at hand.

IN PROPRIA PERSONA.—In one's own proper person.

In *quo quis delinquit, in eo de jure est puniendus* (Co. Litt. 233): One who

fails to perform the duties of his office ought to be punished, in that office.

IN RE.—In the matter of. An expression used in entitling matters other than actions, in which there is not any plaintiff and defendant, especially in the courts of bankruptcy.

In *re communi potior est conditio prohibentis*: In a partnership the condition of one who forbids is the more favorable. When partners are equally divided, those who forbid any change or other alteration have their way.

In *re dubia, benigniorem interpretationem sequi, non minus justius est quam tutius* (D. 50, 17, 192): In a doubtful matter, to follow the more liberal interpretation is not less the just than safe.

In *re dubia, magis inficiatio quam affirmatio intelligenda* (Godb. 37): In a doubtful case, the negative is rather to be understood than the affirmative.

In *rebus manifestis, errat qui auctoritates legum allegat; quia perspicua vera non sunt probanda* (5 Co. 67): In things manifest, he errs who cites legal authorities, because obvious truths need not be proved. A maxim not very closely followed by many of our judges in preparing their opinions on questions of law.

In *rebus quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti* (10 Co. 101): In things that are favorable to the spirit, though injurious to things, an extension of a statute should sometimes be made.

IN REM.—See IN PERSONAM.

In *republica maxime conservanda sunt jura belli* (2 Inst. 58): The laws of war are especially to be preserved in the State.

IN RERUM NATURA.—In the nature of things. To aver in a pleading that the adversary party is not *in rerum natura*, is to allege that he is a fictitious person.

In *restitutionem, non in pœnam hæres succedit* (2 Inst. 198): The heir succeeds to the restitution, not to the penalty.

In *restitutionibus benignissima interpretatio facienda est* (Co. Litt. 112): The most benignant interpretation is to be made in restitutions.

IN SIMILI MATERIA.—Dealing with the same or a kindred subject-matter.

In *societatis contractibus fides exuberet*: The strictest good faith must be exercised in partnership transactions. The highest standard of honor is requisite from every member of a partnership towards every other member.

IN SOLIDO.—In the whole, applied to a joint contract.

IN SPECIE.—In its own form and essence, not in the form of an equivalent.

IN STATU QUO.—In the condition in which it was. *See* STATUS QUO.

In stipulationibus cum quæritur quid actum sit verba contra stipulationem interpretanda sunt (D. 45, 1, 38, 18): In the construction of agreements words are interpreted against the person using them. Thus, the construction of the *stipulatio* is against the stipulator, and the construction of the *promissio* against the promissor.

In stipulationibus id tempus spectatur quo contrahimus (D. 50, 17, 144): In stipulations, that time in which we contract is regarded.

IN STIRPES.—According to lineage. *See* PER CAPITA.

IN SUBSIDIUM.—In aid.

IN SUCH MANNER, (in a statute). 82 N. Y. 139.

In suo quisque negotio hebetior est quam in alieno: Every one is more dull in his own business than in another's. Lord Coke cites this saying as illustrating the reason of his observation, "that it is not safe for any man (be he never so learned) to be of counsel with himself in his own case, but to take advice of other great and learned men." (Co. Litt. 377 b.)—*Burrill*.

IN TERROR.—By way of terrifying.

In testamentis plenius testatoris intentionem scrutamur (3 Buls. 103): In wills we more especially seek out the intention of the testator.

In testamentis plenius voluntates testantium interpretantur (D. 50, 17, 12): In wills the intention of testators is more especially regarded. "That is to say," says Mr. Broom, (Max. (5 edit.) 568,) "a will will receive a more liberal construction than its strict meaning, if alone considered, would permit."

In testamentis ratio tacita non debet considerari sed verba solum spectari debent, adeo per divinationem mentis a verbis recedere durum est: In wills an unexpressed meaning ought not to be considered, but the words alone ought to be looked to; so hard is it to recede from the words by guessing at the intention.

IN THE EVENT OF THE DEATH, (in a will). 2 Ir. Eq. 161, 164.

IN THE FIRST PLACE, (in a will, as to giving priority). 17 Ch. D. 805.

IN THE FULL POSSESSION AND ENJOYMENT OF HIS ESTATE, REAL AND PERSONAL, (in a will). 2 Gr. (N. J.) 207, 210.

IN THE NEXT PLACE, (in a will). 4 Madd. 167.

IN THE REAR THEREOF, (in a devise). 109 Mass. 82.

IN THE SAME MANNER, (in a statute). 122 Mass. 258.

IN THE WORDS AND FIGURES FOLLOWING, (in an indictment). 1 Mass. 53, 62; 1 Chit. Cr. L. 233.

IN THEIR NAMES, (in a will). 12 R. I. 548.

IN THEM, (in a statute). 4 Conn. 60, 64.

IN TOTIDEM VERBIS.—In so many words.

IN TOTO.—Altogether.

In toto et pars continetur (D. 50, 17, 113): In the whole a part is also contained.

In traditionibus scriptorum non quod dictum est sed quod gestum est inspicitur (9 Co. 137): In the traditions of writers, not what is said, but what is done, is regarded.

IN TRANSITU.—During the passage. *See* STOPPAGE IN TRANSITU.

IN TRUST AND UPON CONDITION, (in a deed). 109 Mass. 1.

IN VACUO.—Without object; without concomitants, or coherence.

IN VADIO.—In gage; in pledge.

IN VENTRE SA MERE.—

§ 1. **Civil law.**—An unborn child, or infant *en ventre sa mère*, is for many purposes supposed to be born. It may take property by will or grant, and may have a guardian assigned; and if an estate is limited to A. for life, and after his death to his eldest son, and A. dies leaving his wife *enceinte* of a son, the posthumous son will take the estate, notwithstanding the rules as to contingent remainders. 1 Steph. Com. 139; Wms. Real Prop. 272. *See, also*, GESTATION.

§ 2. **Criminal law.**—If means be used to kill a child in the womb, and the child is born alive and afterwards dies by reason of the means so used, this is murder. 1 Steph. Com. 140. As to procuring abortion, *see* ABORTION; MISCARRIAGE.

IN VENTRE SA MERE, (devise to an infant, is not good). Raym. 83.

In verbis non verba sed res et ratio quærenda est (Jenk. Cent. 132): In the construction of words, not the mere words, but the thing and the meaning are to be inquired after.

IN VIRIDI OBSERVANTIA.—Present to the minds of men, and in full force and operation.

In vocibus videndum non a quo sed ad quid sumatur (Ellesm. Postn. 62): In discourses it is to be seen not from what, but to what, it is advanced.

IN WITNESS WHEREOF.—The initial words of the concluding clause in deeds: "In witness whereof the said parties have hereunto set their hands," etc.

INABILITY, (as cause of removal from office). Wilberf. Stat. L. 140.

— (of a ship to proceed on her voyage). 3 East 249.

INADEQUACY of consideration for a contract, sale, conveyance, or the like, does not generally affect the validity of the transaction, except as supporting a charge of fraud, undue influence or the like. (See **CONSIDERATION**, § 1; **EXPECTANT HEIR**; **FRAUD**; **REVERSION**.) Inadequacy of damages is sometimes a ground for setting aside a verdict and granting a new trial.

INADMISSIBLE.—That which cannot be received, *e. g.* parol evidence, to contradict a written contract.

INÆDIFICATIO.—In the civil law, building on another's land, with one's own materials, or on one's own land with another's materials.

INALIENABLE.—Not lawfully transferable.

INAUGURATION.—The act of inducing into office with solemnity, as the coronation of a sovereign, the inauguration of a president or governor, or the consecration of a prelate.

INBLAURA.—Profit or product of ground. —*Cowell*.

INBORH.—A security, pledge, or *hypotheca*, consisting of the chattels of a person unable to obtain a personal "borg," or surety.

INBOUND COMMON.—An unenclosed common, marked out, however, by boundaries.

INCAPABLE — INCAPACITY.—Incapacity is the opposite of "capacity" (*q. v.*) and, therefore, equivalent to "disability" (*q. v.*)

INCAPABLE OF ACTING, (in a statute). L. R. 2 Q. B. 557.

INCAPABLE TO ACT, (in marriage settlement). L. R. 7 Ch. 223.

INCASTELLARE.—To make a building serve as a castle.—*Jacob*.

INCAUSTUM, or ENCAUSTUM.—Ink. Fleta l. 2, xxvii. 5.

INCENDIARISM.—See **ARSON**.

Incendium ære alieno non exuit debitorem (Cod. 4, 2, 11): A fire does not release a debtor from his debt.

INCEPTION.—The beginning of the operation of a contract or will. The making of the contract, or the writing of the will, is generally deemed its inception.

INCEPTION, (of a promissory note). 20 Johns. (N. Y.) 289.

Incerta pro nullis habentur (Dav. 33): Things uncertain are reckoned as nothing.

Incerta quantitas vitiat actum (1 Rol. 465): An uncertain quantity vitiates the act.

INCEST.—Carnal knowledge of persons within the degrees of kindred in which marriage is prohibited. This crime was at one time a capital offence (4 Bl. Com. 65); but now it is left to the action of the spiritual courts in England (4 Steph. Com. (7 edit.) 280 *n.*), and punishable by fine and imprisonment in America.

INCESTUOUS ADULTERY, (what is). 11 Ga. 53, 55

INCH.—A lineal measure equal to one twelfth part of a foot.

INCH, HYDRAULIC, (defined). 2 Whart. (Pa.) 493.

INCH OF CANDLE.—A mode of sale at one time in use among merchants. A notice is first given upon the exchange, or other public place, as to the time of sale; the goods to be sold are divided into lots, printed papers of which, and the conditions of sale, are published. When the sale takes place, a small piece of candle, about an inch long, is kept burning, and the last bidder, when the candle goes out, is entitled to the lot or parcel for which he bids.—*Wharton*.

INCHARTARE.—To give, or grant and assure, anything by a written instrument.

INCHOATE.—Begun, but not completed; as a contract not executed by all the parties, or a wife's interest in her living husband's lands, called her "inchoate right of dower."

INCIDENT is "a thing appertaining to or following another." (Co. Litt. 151 b.)

Thus, fealty is incident to every tenure, and cannot be separated from it; so a rent may be incident to a reversion, though it may be separated from it, *i. e.* the one may be conveyed without the other. Hence incidents are divisible into separable and inseparable. *Id.* 93a.

§ 2. **Tenure.**—Formerly, every tenure had one or more of the following incidents, most of which no longer exist, namely, fealty, homage and other services, aids, reliefs, primer seisin, wardship, marriage, fines, escheat, forfeiture and heriots. See the various titles.

INCIDENTAL EXPENSES, (of a bank, what are). 1 Gr. (N. J.) 359.

INCIDENTAL PURPOSES, (tax for). 25 Wis. 468.

INCIDENTALLY, (distinguished from "directly"). 14 East 93, 161.

INCIPITUR.—In the common law practice, an *incipitur* was a copy on plain paper of the first words of a proceeding in an action. Thus, in entering a judgment for the purpose of issuing execution, it was sufficient to enter an *incipitur*, *i. e.* the commencement of the proceedings, instead of the whole.

INCISED WOUNDS.—Wounds inflicted with a sharp point or edge.

INCITE — INCITEMENT.—Every one who incites any person to commit a crime is guilty of a misdemeanor, whether the crime is committed or not. Steph. Cr. Dig. 29.

Incivile est, nisi tota sententia inspecta, de aliqua parte judicare (Hob. 171): It is improper to judge of any part unless the whole sentence be examined.

INCIVISM.—Unfriendliness to the State or government of which one is a citizen.

INCLAUSA.—A home-close, or enclosure near a house.—*Cowell.*

INCLOSE, INCLUDE, (in description in a deed). 57 Ala. 569.

INCLOSED GROUND, (what is not). 5 Taunt. 440, 441; 1 Chit. Gen. Pr. 179.

— (within the meaning of 5 Geo. III. ch. 14, § 3). 1 Marsh. 127, 128.

INCLOSURE—INCLOSURE COMMISSIONERS.—

§ 1. In English law, inclosure is the act of freeing land from rights of common, commonable rights, and generally all rights which obstruct cultivation and the productive employment of labor on the soil, (*see* General Inclosure Act, 1845, preamble; Cooke Incl. 162 *n.*; *Elt. Com* 27; 1 Steph. Com. 655; and *see* COMMON;

COMMONABLE;) by vesting it in some person as absolute owner.

§ 2. **Approvement—Customary—By agreement, etc.**—Inclosure may be effected in three manners: (1) In the case of manorial wastes (a) by the lord of the manor alone under his right of approvement (*q. v.*); (b) by the lord under a special custom enabling him, with the consent of the homage, to grant parcels of the waste, to be held of him by copy of court-roll (*Elt. Com.* 255); (c) by the tenants themselves under various special customs, (*Id.* 277; *see* INTAKES; (d) by encroachments, or unauthorized inclosures legalized by lapse of time. (Cooke Incl. 89.) (2) By agreement between the commoners and the owner of the soil. (3) By act of parliament.

§ 3. **By act of parliament—General Inclosure Act.**—Formerly every statutory inclosure was effected by a private act appointing a commissioner and authorizing him to parcel out the land among the persons interested (the commoners and the owners of the soil); but since the passing of the General Inclosure Act, 1845, inclosures are now generally effected by permanent commissioners, called the "inclosure commissioners," who inquire into the expediency of proposed inclosures; if they approve of a proposed inclosure, they make a provisional order setting forth the manner in which it is to be carried out, and, if parliament thinks fit, a general act authorizing the inclosure so recommended, or some of them, is passed (of late years no general inclosure acts have been passed); each inclosure is then carried out by a valuer. Cooke Incl. ch. vii. *See* ALLOT, § 2.

§ 4. **Commons Acts.**—By the Commons Acts, 1876 and 1879, the powers of the inclosure commissioners are extended to cases where it is desirable to regulate, improve, stint, and otherwise deal with commons, without wholly enclosing and allotting them in severalty; thus they may provide for the drainage or levelling of a common, the planting of trees on it, and its general management.

§ 5. Formerly whenever a person entitled to a rent was prevented by gates or other erections from coming on the land to demand or distrain for it, this was called "enclosure," and operated as a disseisin of the rent. (Litt. §§ 237-239; Co. Litt. 161a. *See* DISSEISIN.) The term is now obsolete.

INCLOSURE, (in a statute). 63 Ind. 528; 36 Wis. 42, 44.

INCLUDE, (in a statute). Wilberf. Stat. L. 299, 300.

INCLUDING, (in judiciary act). 4 Cranch (U. S.) 452.

— (in a statute). 5 Serg. & R. (Pa.) 345.

Inclusio unius est exclusio alterius: The inclusion of one is the exclusion of another.

INCLUSIVE.—Comprehending the stated limits or extremes.—*Webster.* Computations of time, *e. g.* of a stated number of days, are generally made *exclusive* of one terminal day and *inclusive* of the other.

INCOME.—Gains, or private revenue, from business, labor, or the investment of property.

INCOME, (defined). 4 Hill (N. Y.) 23.
 — (what is not). 15 Wall. (U. S.) 63; 9 Int. Rev. Rec. 41; 1 Mete. (Mass.) 75.
 — (distinguished from "profits"). 4 Hill (N. Y.) 23.
 — (of an estate, devise of). 5 Me. 199.
 — (of lands, devise of). 9 Mass. 372.
 — (of trust fund). 64 Pa. St. 256; 3 Am. Rep. 585.
 — (in a statute). 45 Barb. (N. Y.) 231; L. R. 4 H. L. 450.
 — (in a will). 30 Barb. (N. Y.) 637; 6 Paige (N. Y.) 298; 24 Wend. (N. Y.) 641; 8 Wheel. Am. C. L. 410; 4 Com. Dig. 165.
 — (when taxable under Gen. Stat. c. 11). 103 Mass. 544.
INCOME AND PRODUCE, (in a will). 103 Mass. 350.

INCOME TAX.—A tax on the yearly profits arising from property, professions, trades, and offices. (2 Steph. Com. 573.) In England, in the case of land, the tenant or occupier is primarily liable to pay the tax, but he is entitled to deduct a proportionate part from his rent, and he cannot by any agreement with his landlord deprive himself of this right. Stat. 5 and 6 Vict. c. 35, § 73.

In commodum non solvit argumentum: An inconvenience does not destroy an argument. *See* ARGUMENTUM AB INCONVENIENTI, &c.

INCOMPATIBLE.—Two or more relations or functions which cannot lawfully co-exist together, or be exercised by the same individual. Thus, one cannot be lessor and lessee of the same land at one and the same time, and the simultaneous holding of two offices by the same person is sometimes forbidden by law, in which case the offices are said to be incompatible.

INCOMPATIBLE OFFICES, (what are). 13 Petersd. Abr. 5 n.
 — (what are not). 7 Wheel. Am. C. L. 147.

INCOMPETENCY—INCOMPETENT.—*See* CAPACITY; COMPETENCE; DISABILITY.

INCOMPLETENESS, (in a statute). 4 Ch. D. 735, 739.

INCONCLUSIVE.—That which may be disproved or rebutted; a presumption which may be rebutted.

INCONSISTENCY.—

§ 1. In construing deeds and wills, the first rule is that every part of the instrument may, if possible, take effect, and none be rejected. If, however, this cannot be done on account of an inconsistency, then the rules differ according as the instrument is a deed or a will. In a deed, if two clauses or parts be repugnant, the first part shall be received and the latter rejected, except there be some special reason to the contrary. (Shep. Touch. 87, 88; 2 Bl. Com. 381; Co. Litt. 112b; Burchell v. Clark, 2 C. P. D. 88.) In a will, on the other hand, the rule is that the latter of two inconsistent provisions prevails. Therefore, if a testator in one part of his will gives a person an estate of inheritance, and in a subsequent part refers to it as an estate for life, the prior gift is restricted accordingly. Jarm. Wills ch. xv.; Greenwood v. Greenwood, 5 Ch. D. 954.

§ 2. Inconsistency in pleading is forbidden. *See* Hawkesley v. Bradshaw, 5 Q. B. D. 302. *See, also*, DEPARTURE.

INCONTINENCY.—Unlawful indulgence of the sexual passion.

INCOPOLITUS.—A proctor or vicar.

Incorporalia bello non adquiruntur: Incorporeal things are not acquired by war.

INCORPORATE COMPANIES, (in a statute). 22 N. Y. 245.

INCORPORATED BANK, (in statute relative to embezzlement). 97 Mass. 50.

INCORPORATION.—

§ 1. **Corporations.**—As applied to corporations, incorporation is the process of forming a corporation (*q. v.*)

§ 2. **Documents.**—As applied to statutes, wills, agreements and other documents, incorporation means that one document is made to form part of another by being referred to in the latter. (This is sometimes called "incorporation by reference," to distinguish it from the case of one document being set out in full in the other, which is actual incorporation.) Thus, in England, almost every act of parliament for the construction of a railway or other public work incorporates the provisions of the Railways Clauses Consolida-

tion Act, or other Clauses Consolidation Act. So, where a testator especially refers to any deed, letter, or other document as carrying out or containing his own testamentary dispositions, the document (if it exist) is considered as incorporated in or forming part of the will, and is included in the grant of probate accordingly. Coote Prob. Pr. 60; Brown Prob. Pr. 104.

INCORPORATION, (distinguished from "corporation"). Ang. & A. Corp. 3.
 — (proof by reputation). 5 Mass. 554.

INCORPOREAL CHATTELS.—Incorporeal rights incident to chattels, *e. g.* patent rights and copyrights. 2 Steph. Com. (7 edit.) 9.

INCORPOREAL CHATTELS, (defined). 2 Sandf. (N. Y.) 552, 559.

INCORPOREAL HEREDITAMENTS.—See **HEREDITAMENTS**, § 3.

INCREASE.—(1) The produce of land; (2) the offspring of animals.

INCREASE, (of female slave). 5 Har. & J. (Md.) 218; 3 Jones (N. C.) L. 473; 4 Desaus. (S. C.) 14; 4 Hen. & M. (Va.) 283; 3 Rand. (Va.) 83.

INCREASE, COSTS OF.—It was formerly a practice with the jury to award to the successful party in an action the nominal sum of 40s. only for his costs; and the court assessed by their own officer the actual amount of the successful party's costs; and the amount so assessed, over and above the nominal sum awarded by the jury, was thence called "costs of increase." (Lush Com. L. Pr. 775.) The practice has now wholly ceased.

INCREMENTUM.—Increase or improvement, opposed to *decrementum* or abatement.

INCROACHMENT.—An unlawful gaining upon the right or possession of another. See **ENCROACHMENT**.

INCUMBENT.—One in possession of an office, civil or ecclesiastical. See **INDUCTION**.

INCUMBENT, (defined). 11 Ohio 46.

INCUMBRANCE.—Any right to, or interest in, land which may subsist in third persons, to the diminution of the value of the estate of the tenant, but consistently with the passing of the fee. (2 Greenl. Ev. § 242.)—*Bouvier*. See **ENCUMBRANCE**.

INCUMBRANCE, (defined). 46 Conn. 510; 23 Ohio St. 584, 591; 24 *Id.* 463, 466; 51 Wis. 300.
 — (what is). 2 Mass. 97; 4 *Id.* 627; 10 *Id.* 263; 7 Neb. 399; 2 Abb. (N. Y.) N. Cas. 56, 63.

— (what is not). 38 Conn. 9, 14; 6 Mass. 249.

— (in an insurance policy). 31 Ohio St. 488.

INCUMBRANCE AND INCUMBRANCER, (in mechanics' lien act). 3 Gilm. (Ill.) 511.

INCUMBRANCER.—The holder of an incumbrance, *e. g.* a mortgage, on the estate of another.

INCUMBRANCES, (in a deed). 2 Wheat. (U. S.) 47, 59; 2 Root (Conn.) 212, 213; 5 Mass. 67, 79.

— (in covenant against). 14 Mass. 143; 17 *Id.* 213.

— (in covenant to discharge). 11 Pick. (Mass.) 462.

— (when action for breach of covenant against will lie). 10 Mass. 313.

INCUR, (defined). 14 Barb. (N. Y.) 202.

INCURRAMENTUM.—The liability to a fine, penalty, or amercement.—*Cowell*.

INCURRED, (defined). 4 Den. (N. Y.) 103.

INCURRING, (defined). 5 Abb. (N. Y.) Pr. 169; 15 How. (N. Y.) Pr. 48, 56.

Inde datæ leges ne fortior omnia posset (Dav. 36): The laws are made lest the stronger should be altogether uncontrolled.

INDEBITATUS ASSUMPSIT.—Being indebted he undertook. That species of the action of *assumpsit* in which the plaintiff first alleged a debt, and then a promise in consideration of the debt. The promise laid was generally implied. All actions on the *indebitatus* counts were afterwards, both in form and substance, actions of debt. They have now ceased to exist, in England and the Code States, as technical forms of action.

INDEBITI SOLUTIO.—In the civil and Scotch law, a payment of what is not due. When made through ignorance or by mistake, the amount paid might be recovered back by an action termed *condictio indebiti*. (D. 12, 6.)—*Bell Dict.*

INDEBITUM.—In the civil law, not due, or owing. (D. 12, 6.)—*Calv. Lex.*

INDEBTED, (in act incorporating a bank). 12 Serg. & R. (Pa.) 77; 17 *Id.* 285.

— (in act regulating banks). 15 Serg. & R. (Pa.) 140, 142.

— (in general railroad act of 1849). 29 Pa. St. 151.

— (in articles of association). 2 Ch. D. 101.

— (in a by-law). 9 Mo. 149, 154.

INDEBTED STOCKHOLDER, (dividends on shares of). 8 Pick. (Mass.) 90.

INDEBTEDNESS, (what constitutes). 34 Iowa 208.

— (what is not). 12 R. I. 179.

INDECENCY.—It is a misdemeanor to do any grossly indecent act in any open or public place. As to what acts are punishable as indecent, *see* the statutes of the jurisdiction. *See, also*, OBSCENITY.

INDECENT EXPOSURE.—This is an indictable offence at common law. Exposure of the person in or in view of any public street or place is also an offence by statute in the several States.

INDECIMABLE.—Not tithable.

INDEFEASIBLE.—That which cannot be made void; as, an absolute estate, which cannot be defeated.

INDEFEASIBLE TITLE, (in an obligation to make). 3 Bibb (Ky.) 317.

INDEFENSUS.—Unanswered, in pleading.

INDEFINITE FAILURE OF ISSUE.—A failure of issue not merely at the death of the party whose issue are referred to, but at any subsequent period, however remote. (1 Steph. Com. 562.) A failure of issue whenever it shall happen, sooner or later, without any fixed, certain or definite period within which it must happen. 4 Kent Com. 274.

INDEFINITE PAYMENT.—Where a debtor owes several debts to a creditor, and makes a payment without specifying to which of the debts it is to be applied. *See* APPROPRIATE, § 5.

INDEMNIFY—INDEMNIFICATION.—**LATIN:** *in*, in the sense of taking away, and *damnum*, loss.

§ 1. To indemnify is to make good a loss which one person has suffered in consequence of the act or default of another, (*see* *Ferguson v. Gibson*, L. R. 14 Eq. 379,) and the operation of making good the loss is called indemnification. (*See* 19 and 20 Vict. c. 97, § 5.) Thus, if A. fails to pay a debt which he owes to B., and a surety, C., pays it, he is said to indemnify B., and B. is said to obtain indemnification. So, if A. wrongfully causes a loss to B., A. is liable to indemnify B. for the loss which he has sustained. *Heritage v. Paine*, 3 Ch. D. 594.

§ 2. A promise to indemnify is the same

thing as an indemnity or guaranty (*q. v.*), and hence, "to indemnify" sometimes signifies "to give an indemnity," *i. e.* "to promise to indemnify." Thus, a person to whom an indemnity is given is said to be indemnified. *See* DAMNIFY.

INDEMNIFY, (defined). 15 Minn. 467.

— (bond to, when broken). 8 Cow. (N. Y.) 623.

— (bond to, what is not). 1 Hill (N. Y.) 145.

— (contract to). 1 Chit. Gen. Pr. 583.

— (covenant to). 5 Mass. 411; 2 Nev. & M. 42, 48; 1 Sch. & L. 107, 109.

INDEMNIFYING, (synonymous with "saving harmless"). 1 Root (Conn.) 292.

INDEMNITY.—

§ 1. An indemnity is a collateral contract or security to prevent a person from being damnified by an act or forbearance which he does at the request of the indemnitor. Thus, if A. agrees not to sue B. for a debt during a certain period, in consideration of a promise by C. to repay him any loss which he may suffer from not suing B. at once, C.'s promise constitutes an indemnity.

§ 2. **Indemnity clause.**—Settlements and wills sometimes contain a provision that the trustees shall not be liable for the acts or defaults of their co-trustees, or of any agent, banker, &c., but shall only be liable for what they actually receive, and for their own acts and neglects. Such a clause now forms part of every instrument creating a trust in England. Stat. 22 and 23 Vict. c. 35, § 31. *See* GUARANTY; EXPRESS; IMPLIED; INDEMNIFY.

INDEMNITY, (bond of, what is). Sax. (N. J.) 50.

— (bond of, liability upon). 8 Wend. (N. Y.) 452.

— (parol agreement of, what is). 12 Wend. (N. Y.) 449.

INDEMNITY, SUFFICIENT, (in an award). 2 McCord (S. C.) 279; 1 Wheel. Am. C. L. 456.

INDENIZATION.—The act of making free, or of naturalizing. *See* DENIZATION.

INDENT—INDENTURE.—

§ 1. To indent a document is to cut the top of the first page or sheet in a toothed or waving line. The most usual instance of this is in the case of a deed indented or indenture (*infra*, § 2,) but it is also done in other cases. Thus, an inquisition under an *elegit* (*q. v.*) is indented.

§ 2. An indenture is a deed made between two or more parties, *e. g.* an ordinary conveyance, lease, mortgage, settlement, &c. Formerly it was usual when a deed was made between two parties to write two copies of it on one piece of parchment or paper, and then to cut it in two in an indented or toothed line, so that each copy of the deed fitted the other and could thus be identified. (Britt. 99a.) Now, a deed purporting to be an indenture has the effect of an indenture, although not actually indented. (Stat. 8 and 9 Vict. c. 106, § 5.) Indentures were formerly called *bipartite*, *tripartite*, *quadripartite*, &c., according as they were made in two, three, or four parts. All the parts of an indenture are but one deed in law. Litt. § 370; Co. Litt. 229a; Shep. Touch. 50. Blackstone says that the part which is executed by the grantor is called the "original," and the rest are counterparts. (2 Com. 296.) This, however, in practice, is rarely said except of a lease (*q. v.*) See COUNTERPART; COVENANT; DEED.

INDENTURE OF APPRENTICESHIP.—A contract in two parts, by which a person, generally a minor, is bound to serve another in his trade, art, or occupation for a stated time, on condition of being instructed in the same.

INDENTED, MADE AND CONCLUDED, (in a declaration). 4 East 477; Com. L. & T. 462.

INDENTURE, (defined). 8 Ala. 320; 1 Halst. (N. J.) 169, 175; 1 Harr. (N. J.) 537.

— (what is). 2 Wash. (Va.) 63.

— (implies sealing). 2 Gr. (N. J.) 542; 10 Serg. & R. (Pa.) 416; 1 Saund. 291 n.

INDENTURE, VOIDABLE, (defined). 3 Halst. (N. J.) 260.

INDEPENDENT COVENANT.—A covenant which must be performed in any event, or the contract is broken, whether the covenants on the part of the other party be performed or not. See DEPENDENT.

INDETERMINATE.—That which is uncertain, or not particularly designated; as, if I sell you one hundred bushels of wheat, without stating what wheat.—*Bouvier*.

Index animi sermo: Speech is the expression of the mind.

INDIAN.—One of the aboriginal inhabitants of America.

INDIAN, (defined). 4 How. (U. S.) 567; 11 Ala. 826, 835.

— (who is not). Hempst. (U. S.) 450, 458, 497, 501.

— (as used in revised statutes 414, § 3, act of 1843). 8 Ind. 6.

— (is not a competent witness). 4 Blackf. (Ind.) 369.

INDIAN COUNTRY, (defined). 17 Int. Rev. Rec. 20; 2 Sawy. (U. S.) 311, 314.

INDIANS, (are not aliens). 20 Johns. (N. Y.) 188.

— (are not citizens). 20 Johns. (N. Y.) 693.

— (are not entitled to elective franchise). 1 Bail. (S. C.) 215.

— (may be slaves). 1 Halst. (N. J.) 374.

— (rights of). 5 Pet. (U. S.) 48; 6 Id. 516, 517; 9 Id. 746.

— (title to lands purchased from). 9 Pet. (U. S.) 713.

INDIANS BY DESCENT, (in a treaty). 9 Mich 381.

INDICATIF.—An abolished writ by which a prosecution was in some cases removed from a court-christian to the Queen's Bench.—*Encycl. Lond.*

INDICATIVE EVIDENCE.—This is not evidence properly so called, but the mere suggestion of evidence proper, which may possibly be procured if the suggestion is followed up.—*Brown*.

INDICAVIT.—He has proclaimed. A writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by another clerk for tithes which amount to a fourth part of the profits of the advowson, when the suit belongs to the common law courts, by West. II. c. 5; 13 Edw. I. Stat. 4. The patron of the defendant is allowed this writ, as he is likely to be prejudiced in his church and advowson, if the plaintiff recover in the spiritual court. Reg. Orig. 55.

INDICIA.—In the law of evidence, signs, marks. See INDICATIVE EVIDENCE.

INDICTED.—Charged in an indictment with a criminal offence. See INDICTMENT.

INDICTED FOR OR CHARGED WITH ANY OFFENCE, (in a statute). 7 Q. B. D. 24, 28.

INDICTEE.—A person indicted.

INDICTIO.—An indictment.

INDICTION, CYCLE OF.—A mode of computing time by the space of fifteen years, instituted by Constantine the Great; originally the period for the payment of certain taxes. The popes, since the time of Charlemagne, have

dated their acts by the year of the indiction, which was fixed on the 1st of January, A. D. 313. At the time of the reformation of the calendar, the year 1582 was reckoned the 10th year of the indiction. This date, when divided by fifteen, leaves a remainder of seven. That is three less than the indiction, and the same must be the case in all subsequent calculations. So that in order to find the indiction for any year divide the date by fifteen and add three to the remainder. It has no connection with the motion of the heavenly bodies. Some of the charters of King Edgar and Henry III. are dated by indictions.—*Wharton*.

INDICTMENT.—A written accusation of one or more persons of a crime presented on oath by a grand jury. The indictment is preferred, *i. e.* laid, before the grand jury under the technical name of a bill. The witnesses in support of the charge are then examined, and if the offence appears to a majority of the jury (consisting of twelve at least) to be sufficiently proved to put the offender on his trial, they indorse on the indictment, "true bill." The indictment is then said to be found, and the offender stands indicted and must be arraigned (*q. v.*) If the majority think that the offence has not been sufficiently proved, they indorse "No true bill" on the indictment, and the accused person is then discharged. Strictly speaking, the indictment is not so called until it has been found a true bill. Archb. Cr. Pl. 78. As to the form of the indictment, see *Id.* 25; Pritch. Quar. Sess. 143. See **IGNORAMUS**; **INFORMATION**; **INQUEST**; **JURY**; **PRESENTMENT**; **VENUE**.

§ 2. **Form.**—An indictment consists of three principal parts—the commencement (or caption), statement, and conclusion. The caption is no part of an indictment; it is merely the style of the court where it is preferred, which is prefixed by way of preamble, when the record is made up, or when it is returned to a *certiorari*. The statement must be certain as to the party indicted, and as to the person against whom the offence was committed, and also as to time and place, facts, circumstances, and intent. It must be positive, and neither double nor repugnant. There is, in general, no time limited for preferring an indictment, but by several statutes certain limitations for certain offences are fixed. If an indictment be defective, it will be quashed.

§ 3. **In the Scotch law**, an indictment is the form of process by which a criminal is brought to trial at the instance of the lord advocate. Where a private party is a principal prosecutor, he brings his charge in what is termed the form of criminal letters.

INDICTMENT, (defined). 12 Conn. 452; 13 Wend. (N. Y.) 311, 317; 1 Chit. Crim. L. 168. — (distinguished from "information"). 12 Conn. 452. — (in General Statutes, c. 171). 2 Allen (Mass.) 503. — (in revised statutes). 72 Ind. 39, 334. — (in State constitution). 72 Mo. 106; 19 Ohio St. 248.

Indictment de felony est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Anglia non est interregnum (Jenk. Cent. 205): Indictment for felony is against the peace of our lord the king, his crown and dignity in general, and not against his individual person; because in England there is no interregnum.

INDICTOR.—He who indicts another for an offence.

INDIFFERENT.—Without bias or partiality; disinterested.

INDIFFERENT, (who is not). 1 Conn. 294, 309; 7 Id. 229, 231; 2 Root (Conn.) 520. — (in a statute). 1 Day (Conn.) 110.

INDIGENA.—A subject born; one born within the English realm, or naturalized by act of parliament; a native. Co. Litt. 8a.

INDIRECT, (in an agreement). 2 Gill & J. (Md.) 382.

INDIRECT EVIDENCE.—Proof of collateral circumstances, from which a fact in controversy, not directly attested by witnesses or documents, may be inferred. It is also called "circumstantial" and "presumptive" evidence.

INDIRECTLY OR DIRECTLY, (in usury act). 1 Cowp. 114.

INDISTANTER.—Forthwith; without delay.

INDIVIDUAL BANKER, (who is). 80 N. Y. 229.

INDIVIDUALLY, (in a statute). 6 Wend. (N. Y.) 347.

— (synonymous with "personally"). 2 Sandf. (N. Y.) Ch. 270; 3 Wend. (N. Y.) 364.

INDIVISUM.—That which is held in common, without partition.

INDORSE—INDORSEMENT.—**LOW LATIN:** *indorsare*, from Latin, *in*, on, and *dorsum*, the back.—*Du Cange, s. v.*

§ 1. To indorse is to write something on the back of an instrument. "Indorsement" signifies either the act of indorsing, or the writing itself.

§ 2. **Deed.**—When a deed to be executed has reference to a transaction already embodied in a deed between the same parties, or some of them, or their predecessors in title, it frequently saves the repetition of many recitals and provisions to make the terms of the new deed refer to those of the former one, and to indorse it on that instrument; thus, the reconveyance of mortgaged property is frequently indorsed on the mortgage, and an appointment of new trustees on the settlement or other instrument creating the trust.

§ 3. **Bills of exchange—In blank—Special.**—Indorsement is also an important mode of transferring bills of exchange, checks, bills of lading, and similar documents, and is effected by the person to whose order the document is payable, writing his name on the back and delivering it to the transferee. (Sm. Merc. Law 233; Byles Bills 1, 151.) An indorsement consisting merely of the indorser's name, is called an indorsement in blank; when it specifies the name of the person (the indorsee) to whom the document is transferred or indorsed, it is called a special indorsement, or an indorsement in full. (Byles 149.) An indorsement in blank makes the instrument payable to bearer; a special indorsement makes it payable to the order of the person named in the indorsement. As to the liability of an indorser, see BILL OF EXCHANGE, § 4.

The following kinds of indorsement seem, in practice, to be peculiar to bills of exchange and promissory notes:

§ 4. **Sans recours—Conditional—Restrictive.**—An indorsement without recourse (*sans recours*) is where an indorser declares that he shall not be liable if the bill, &c., is dishonored by the antecedent parties. (*Id.* 152.) A conditional indorsement is one made before acceptance, in such a form as to impose on the drawee accepting the bill a liability to pay the bill only on the happening of a particular event. (*Id.* 153.) A restrictive indorsement is where the bill is expressed to be indorsed to a person for a particular purpose (*e. g.*

"Pay to A. B. for my account"), and prevents him from negotiating it. *Id.* 157.

INDORSE, (defined). 7 Pick. (Mass.) 117; 2 Bish. Cr. L. § 570 a.
INDORSED, (in mercantile law). 66 Ill. 37; 100 Mass. 12.

INDORSEE.—The person to whom a bill of exchange, promissory note, bill of lading, &c., is transferred by indorsement.

INDORSEE IN DUE COURSE, (who is). 54 Cal. 107.

INDORSEMENT, (defined). 6 Cranch (U. S.) 222; 17 Conn. 519; 49 Ind. 504; 124 Mass. 327, 329; 12 Ad. & E. 455, 459; 3 P. Wms. 428.
— (what is). Hempst. (U. S.) 164, 166;
17 Conn. 519; 5 Barn. & C. 234, 238; 1 Str. 18.
— (what is not). 8 Mees. & W. 494, 495.
— (how made). 1 Vr. (N. J.) 259.
— (when part of a deed). 1 Stark. 162, 164.

INDORSEMENT IN BLANK.—
See INDORSE, § 3.

INDORSEMENT IN BLANK, (effect of). 5 Cranch (U. S.) 142; 4 Mass. 45.

INDORSEMENT IN FULL.—See INDORSE, § 3.

INDORSER.—He who indorses, *i. e.* being the payee or holder, writes his name on the back of a bill of exchange, &c.

INDORSER, (nature of engagement of). 1st Serg. & R. (Pa.) 160.
— (in act to incorporate a bank). 2 Serg. & R. (Pa.) 117.

INDOWMENT.—See ENDOWMENT.

INDUCEMENT.—An allegation of a motive; an incitement to a thing, either to the making of a contract, or the commission of a tort or crime; the introductory part of a pleading.

INDUCEMENT, (in pleading). 1 Chit. Pl. 293.

INDUCIÆ LEGALES.—The days between the citation of a defendant and the day of appearance.

INDUCTION.—In ecclesiastical law, induction is the ceremony by which an incumbent who has been instituted to a benefice is vested with full possession of all the profits belonging to the church, so that he becomes seised of the temporalities of the church and is then complete incumbent. It is performed by virtue of a mandate of induction directed by the bishop to the archdeacon, who either performs it in person, or directs his precept to one or more other clergymen to do it. Phillim. Ecc. L. 477, where the

ceremony is described; 1 Bl. Com. 391. See COLLATION; INSTITUTION.

INDULGENCE.—(1) In the Roman Catholic church, a remission of the punishment due to sins, granted by the pope or church, and supposed to save the sinner from purgatory. Its abuse led to the Reformation in Germany.—*Wharton*. (2) Forbearance (*q. v.*)

INDULTO.—A dispensation granted by the pope to do or obtain something contrary to the common law.

INDUMENT.—Endowment (*q. v.*)

INDUSTRIAL AND PROVIDENT SOCIETIES.—Societies formed in England for carrying on any labor, trade or handicraft, whether wholesale or retail, including the buying and selling of land and also (but subject to certain restrictions) the business of banking. (I. and P. Soc. Act, 1876, § 6.) Such a society (which must consist of seven persons at least) when registered under the act becomes a body corporate with limited liability, and with the word "limited" as the last word in its name, (*Id.* §§ 7, 11,) and is regulated by rules, providing for the amount of the shares, the holding of meetings, the mode in which the profits are to be applied, &c. *Id.* § 9.

§ 2. **Objects of.**—Industrial and provident societies originated in the adoption of the principle of co-operation by working men for the purpose of buying goods for their own consumption at wholesale prices and dividing them among themselves at a price sufficient to pay the expenses and realize a small profit. Many such societies also offer inducements for saving, by having the capital divided into shares of a small amount payable by weekly or monthly instalments. (Dav. Ind. and Prov. Soc. 3; Friendly Societies Act, 1850; I. & P. Soc. Acts, 1852, 1854, 1856, 1862, 1867, all now repealed.) Sometimes part of the profits is applied in paying interest at a certain rate on the shares, and the balance for any purpose authorized by the Friendly Societies Acts. (See the form of rules in Davis 95.) Sometimes also the shares are not transferable, but the investment of each member is accumulated for the benefit of his family. (*Id.* 97.) No member can hold more than £200 in the society. I. and P. Soc. Act, 1876, § 6. See BUILDING SOCIETIES; DISSOLUTION; FRIENDLY SOCIETIES; NOMINATION.

INELIGIBILITY.—Disqualification or incapacity to be elected to an office. Thus, an alien or naturalized citizen is ineligible to be elected president of the United States.

INEVITABLE ACCIDENT.—See ACT OF GOD; CASUS FORTUITUS.

INEVITABLE ACCIDENT, (defined). 24 How. (U. S.) 307; 6 McLean (U. S.) 288; 1 Newb. Adm. 163; 11 La. Ann. 428; 21 Wend. (N. Y.) 190, 192.

INEVITABLE ACCIDENT, (what is). 2 Wall (U. S.) 550; 12 Ct. of Cl. 480, 491; 6 N. of Cas. 634; 2 W. Rob. 205; 3 *Id.* 318.

— (distinguished from "act of God"). 31 Barb. (N. Y.) 45; 4 Doug. 287, 290.

— (synonymous with "act of God") 2 Ga. 356; 3 Miss. 572.

— (in an insurance policy). 43 N. Y. 75, 81.

— (in a lease). 7 Ch. D. 815.

INEVITABLE CASUALTY, (defined). 1 Cranch (U. S.) 345-357.

INEVITABLE DANGERS OF THE RIVER, (in a bill of lading). 8 Serg. & R. (Pa.) 533.

INEWARDUS.—A guard; a watchman.—*Domesd.*

INFALISTATUS.—A capital punishment, inflicted on the sands or sea-shore. See *Ralph de Hengham, Summa Parva*, c. 3, and *Selden's* notes thereon.

INFAMIS.—Infamous; not of good character.—*Calv. Lex.*

INFAMOUS, (in revised statutes, § 5132). 4 Sawy. (U. S.) 211, 212.

INFAMOUS CRIME.—An offence working infamy in the perpetrator. The authorities are not in harmony as to what offences are infamous, but in some jurisdictions the phrase is defined by statute. See 3 Crim. L. Mag. 69.

INFAMOUS CRIME, (defined). 4 Sawy. (U. S.) 211; 1 Dak. T. 297.

— (in a statute). 1 Moo. C. C. 34, 38.

— (what is, under United States constitution). 9 Fed. Rep. 886, 896.

— (what is not). 15 Bankr. Reg. 325; 1 Ry. & M. 270.

INFAMY.—Public disgrace; total loss of character, arising from conviction of an infamous crime. This does not now incapacitate from giving evidence, in England, or in most of the States. In a few, however, convicts are still incompetent to testify.

INFANCY.—The status of being an infant (*q. v.*)

INFANCY, (as a defence to action). Penn. (N. J.) 372; 13 Wend. (N. Y.) 576.

INFANGENTHEF.—A privilege of lords of certain manors to judge any thief taken within their fee.—*Anc. Inst. Eng.*

INFANT.—A person under the age of twenty-one years. Infants are subject to various disabilities imposed on them for their protection. Thus, an infant cannot,

as a rule, alien his lands, or make a deed or contract binding on him, and he cannot make a valid will under a certain age. He may, however, contract for necessities (*q. v.*) In America, the contracts of an infant not binding on him are voidable only, and therefore, capable of being ratified by him after attaining majority; but this is not so in England, the Infant Relief Act, 1874, having made such contracts absolutely void.* So an infant under the age of seven years cannot be guilty of felony; and between the ages of seven and fourteen he is presumed to be *doli incapax* (incapable of discerning between good and evil) until the contrary is shown. (4 Steph. Com. 24.) An infant of fourteen years, if a male, and of twelve years, if a female, may give the consent required (among other things) to make a valid marriage; but a promise to marry at a future time is not binding on an infant under twenty-one. 2 *Id.* 244.

§ 2. By the English Conveyancing Act, 1881, § 41, where an infant is entitled to land in his own right in fee-simple, or for any leasehold interest at a rent, the land is to be deemed to be a settled estate within the Settled Estates Act, 1877. (*See SETTLED ESTATES.*) By section 42 of the same act, where land is held in trust for an infant under an instrument coming into operation after the 31st December, 1881, the trustees may enter into possession of it, cut timber, erect, pull down, rebuild and repair houses, continue the working of mines and quarries, and generally deal with the land in a proper course of management, apply the income, or part of it, for the infant's maintenance, and invest the surplus for his benefit. *See MAINTENANCE.*

§ 3. An infant may in some cases act in a representative capacity or *in auter droil*, in the same manner as a person *sui juris*. Thus, an infant may act as an agent or as an attorney under a power, and it seems that an infant may also exercise a power of appointment over personal estate, although not over real. *In re D'Angibau*, 15 Ch. D. at p. 246; *Stokes on Powers of Attorney*, 10. *See EXECUTOR; GRANT, § 8; GUARDIAN, § 13; TRUSTEE.*

* 1 Bl. Com. 463 *et seq.*; 2 Steph. Com. 303; Infants Relief Act, 1874. This act provides that all contracts after the 7th August, 1874, entered into by infants for the repayment of money lent or for goods supplied (other than contracts for necessities), and all accounts stated by infants, shall be absolutely void; and (§ 2) no action shall be brought to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any

§ 4. In English probate practice, an infant is a person under the age of seven years, as opposed to a minor, who is a person between the age of seven and twenty-one years. *See GUARDIAN, § 13. See, also, FEOFFMENT, § 1; GUARDIAN; HABEAS CORPUS; NECESSARIES; SETTLEMENT; WARD OF COURT.*

INFANT, (contracts of). 3 Gr. (N. J.) 343; Penn. (N. J.) 866; South. (N. J.) 87, 100. — (should appear by guardian). 14 Johns. (N. Y.) 417; 16 Wend. (N. Y.) 48.

INFANTIA.—In the civil law, the period of infancy between birth and the age of seven years.—*Calv. Lex.*

INFANTICIDE.—The killing of a child after it is born. The felonious destruction of the *fœtus in utero* is more properly called "feticide," or "criminal abortion."

§ 2. In every case in which an infant is found dead, and its death becomes the subject of judicial investigation, the great questions which present themselves for inquiry are: (1) What is the age of the child? (2) Was the child born alive? (3) If born alive, how long had it lived? (4) If born alive, by what means did it die?

§ 3. If it be proved that its death was owing to violence, it is then to be ascertained who the murderer of it is. If suspicion fall upon the mother, it is to be determined: (1) Whether she has been delivered of a child? and (2) whether the signs of a delivery correspond as to time, &c., with the appearances developed in the child?

§ 4. There are two ways in which a child may be born alive: (1) The cord may be pulsate, showing that it is alive, yet it may not respire; (2) It may be born and respire.

§ 5. When a child is born alive, but has not yet respired, its condition is like that of the *fœtus in utero*. It lives merely because the foetal circulation is still going on. In this case none of the organs undergo any change. The case of a child

ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age. As to the construction of these somewhat inconsistent provisions, *see Coxhead v. Mullis*, 3 C. P. D. 439; *Northcote v. Doughty*, 4 C. P. D. 385; *Ditcham v. Worrall*, 5 C. P. D. 410; *Reg. v. Wilson*, 5 Q. B. D. 28.

who is born alive and respires, is tested by respiration. The proofs of this test are deduced from the changes which take place in the system as soon as respiration commences. See this subject fully discussed in the following works: Beck Med. Jur. c. viii.; Tayl. Med. Jur. c. xxxviii. *et seq.*; and Guy Foren. Med. 118 *et seq.*

INFANTS' MARRIAGE SETTLEMENT ACT.—The Stat. 18 and 19 Vict. c. 43, under which an infant male (not under twenty years) or an infant female (not under seventeen years) may, with the sanction of the Court of Chancery, to be obtained on petition, make a valid and binding settlement of his or her property upon the occasion of his or her marriage. Except as regards estates tail and powers of appointment, such a settlement will hold good, even though the infant settlor should die under the age of twenty-one years.—*Brown*.

INFEOFFMENT.—A Scotch term for the act or instrument of feoffment, or investiture, synonymous with *sasine*, the instrument of possession.

INFER, (defined). 46 Conn. 385.

INFERENCE.—A conclusion of fact drawn by a process of reasoning from one or more other facts sufficiently proved; also the process of drawing such conclusion.

INFERENCE, (in pleading, defined). 3 Harr. (N. J.) 354, 355.

INFERENCE OF FACT, (what is). 3 Whart. (Pa.) 149.

INFERIOR COURTS.—See COURT, § 4.

INFERIOR COURTS, (defined). 3 Pet. (U. S.) 193.

—— (United States Courts are not). 10 Wheat. (U. S.) 192.

—— (jurisdiction of, presumed until contrary is shown). 8 N. Y. 254.

—— (when judgments of disregarded). 8 How. (U. S.) 586, 611.

INFERIOR TRADESMEN, (in a declaration). 5 Mod. 307.

—— (in a statute). 1 Com. 26; 1 Ld. Raym. 149.

INFERIOR TRIBUNALS, (in a statute). 31 Iowa 553.

INFEUDATION.—The placing in possession of a freehold estate; also, the granting of tithes to mere laymen.

INFICIATIO.—In the civil law, a denial of a fact claimed to exist by plaintiff, *e. g.* the indebtedness alleged.

INFIDEL.—A disbeliever in Christianity and the truths of the Scriptures; a freethinker. Formerly infidels were incompetent to give testimony, but in most jurisdictions this is no longer so. See ATHEIST.

INFIDEL, (who is). Willes 541, 542.

INFIDELIS.—In old English law, an infidel or heathen. In the feudal law, one who violated fealty.

INFIHT, or INSOCNA.—Violence committed on a person by one inhabiting the same dwelling.

Infinitum in jure reprobatur (9 Co. 45): Infinity is reprehensible in law.

INFLICT, (does not necessarily imply direct violence). 101 Mass. 23.

INFLUENCE, (in election act). 3 Yeates (Pa.) 65.

INFLUENCE, UNDUE, (when deeds will be set aside on account of). 11 Wheat. (U. S.) 125.

INFORMAL.—Deficient in legal form; inartificially drawn up.

INFORMALITY.—Want of legal form.

INFORMALITY, (in amendment act). 16 Serg. & R. (Pa.) 118; 2 Watts (Pa.) 312.

—— (in procedure act). 5 Binn. (Pa.) 54.

INFORMATION.—An information is in the nature of a pleading. It is the step by which several civil and criminal proceedings are commenced. See, also, *infra* § 18.

§ 1. **Former English practice—Civil cases—Chancery.**—Civil proceedings by information were formerly brought in England either in Chancery or in the Court of Exchequer, according to the nature of the remedy sought. When a suit in Chancery was instituted on behalf of the crown, or of persons partaking of its prerogative or under its particular protection (*e. g.* a charity), the matter of complaint was offered to the court by a document called an "information," which was a statement of facts by the attorney-general or other proper officer (the informant) resembling a bill of complaint (*q. v.*), except that it was not in the form of a petition.

§ 2. **Relator.**—If the suit did not immediately concern the rights of the crown, its officers depended on the relation of some person whose name was inserted in the information, and who was termed the "relator" (*q. v.*)

§ 3. **Information and bill.**—It sometimes happened that this person had an interest in the matter in dispute, of the injury to which interest he had a right to complain. In this case, his

personal complaint was incorporated with the information given to the court by the officer of the crown; under the old practice they formed together an information and bill, and were so termed. *Mitt. Pl.* 22, 99; *Dan. Ch. Pr.* 8.

§ 4. **Ex officio.**—When an information was filed by the attorney-general upon his own authority, it was sometimes called an information "ex officio," as opposed to an information at the relation of a private individual. *Attorney-General v. Cockermonth Local Board*, *L. R.* 18 Eq. 176.

§ 5. **Present English practice.**—At the present day proceedings by information in the Chancery Division assume the form of an action by the attorney-general, either *ex officio* or at the relation of some person or corporation. *Rules of Court*, i. 1; *Attorney-General v. Shrewsbury Bridge Co.*, *W. N.* (1880) 23; *Attorney-General v. Gas Light and Coke Co.*, 7 *Ch. D.* 217; *Attorney-General v. Mayor of Brecon*, 10 *Id.* 207; *Attorney-General v. Great Eastern Rail. Co.*, 11 *Id.* 449.

§ 6. **English information.**—There was also a proceeding called an "English information" in the Exchequer Division, under the equitable jurisdiction of the Court of Exchequer, so called because it was in the nature of a bill of complaint in equity, which was formerly called an English bill. *Crown Suits Act*, 1865, §§ 6 *et seq.*; see *BILL OF COMPLAINT*, § 7; *Attorney-General v. Halling*, 15 *Mees. & W.* 687; *Corporation of London v. Attorney-General*, 1 *H. L. Cas.* 440.

§ 7. **Exchequer.**—The prerogative process of information was in the nature of a civil action at the suit of the crown, and was instituted for the purpose of obtaining satisfaction in damages for some injury to crown possessions, or to recover money due to or goods claimed by the crown. The information was not founded on any writ, but merely on the intimation of the attorney-general, who "gave the court to understand and be informed of" the matter in question. The party was then put to answer by plea, which the crown might traverse or demur to, &c., and trial was had as in suits between subject and subject. Informations were of three principal kinds:

§ 8. **Intrusion.**—An information of intrusion was in the nature of an action of trespass *quare clausum fregit*, and was brought for any trespass committed on the lands of the crown. A similar information lies at the instance of the prosecuting officer of the State, in Massachusetts and Virginia.

§ 9. **Debt (in personam).**—An information of debt (or information *in personam*) was brought upon any contract for moneys due to the crown, (though process by extent was more usual in such cases,) or for any forfeiture due to the crown upon the breach of a penal statute, especially when the revenue was concerned.

§ 10. **In rem.**—An information *in rem*, or real information, lay where any goods were supposed to become the property of the crown as derelict, and no man appeared to claim them, or where goods were forfeited for non-payment of excise duties, &c. 3 *Bl. Com.* 261; *Chit. Prerog.*

332; *Man. Exch. Pr.* 142; *Crown Suits Act*, 1865, § 31 *et seq.*

§ 11. **Devenerunt.**—An information of *devenerunt* lay to recover goods belonging to the crown which "have come into the hands" of a subject. It was in the nature of an action of detinue, and was either wholly or partly *in rem*. (*Man. Exch. Pr.* 145. For an instance of an information and protest in an Admiralty action, see *The Parlement Belge*, 4 *P. D.* p. 130.) Under the new practice it would seem that informations of the kinds mentioned above (§ 6 *et seq.*) should be assigned to the Queen's Bench Division. See *HIGH COURT OF JUSTICE*.

§ 12. **English criminal practice.**—For penalties, &c.—Criminal informations are of three kinds: Those brought partly at the suit of the crown and partly at that of a subject, to enforce a penalty or forfeiture under a penal statute. These are a sort of *qui tam* actions, only carried on by a criminal instead of a civil process. 4 *Bl. Com.* 308; *Stat. 31 Eliz. c. 5*. See *ACTION*, § 9.

§ 13. **Queen's Bench—Ex officio.**—Informations brought in the Queen's Bench Division in the name of the crown alone. These are of two kinds. Informations by the crown, filed *ex officio* by the attorney-general, are employed in the case of crimes which peculiarly tend to disturb or endanger the government, or to molest or affront the queen in the regular discharge of her royal functions.

§ 14. **Ex relatione.**—Informations filed by the master of the crown office upon the complaint or relation of a private subject, are applicable for the punishment of any gross and notorious misdemeanors, such as riots, batteries, libels, bribery, misconduct by magistrates, &c. The defendant pleads or demurs to the information, and the trial and subsequent proceedings resemble those on an ordinary prosecution by indictment in the Queen's Bench Division, except that the preliminary inquiry by a grand jury is absent. 4 *Bl. Com.* 308; *Grady & Scotland's Crown Side Pr. passim*; *Archb. Cr. Pl.* 112 *et seq.* See *PLEADING*; *QUEEN'S BENCH*; *QUO WARRANTO*; *TRIAL*.

§ 15. **Justices of the peace.**—Proceedings before justices of the peace in matters of a criminal nature, are commenced by an information, which is a statement of the facts of the case made by the informant or prosecutor, sometimes verbally, sometimes in writing, and either with or without an oath. In the latter case the information is said to be exhibited. *Stone Just.* 75. See *COMPLAINT*.

§ 16. **In American practice—Federal courts.**—An information lies in cases of illegal exportation of goods (1 *Gall. (U. S.)* 3); or of smuggling (1 *Mas. (U. S.)* 482); and in cases of misdemeanors and crimes not infamous; and a libel in the nature of an information lies to enforce forfeitures for violation of the customs and internal revenue laws.

§ 17. — **State courts.**—In many of

the States an information in the nature of a *quo warranto* (*q. v.*) lies to try title to office, or to restrain the usurpation of a corporate franchise; and in nearly all of them certain misdemeanors, and lesser crimes, (generally of grades not punishable capitally or by confinement in the State prison,) may be prosecuted by information as a substitute for indictment. Also, actions for penalties given by statute, and actions by the attorney-general, both *ex officio* and on the relation of a private individual, are frequently commenced by information, the practice being in many respects similar to the English practice in like cases. *See supra*; and consult the statutes of the several States for matters of detail. *See BILL OF INFORMATION*; *QUO WARRANTO*.

§ 18. "Information" is also frequently used in the law in its vernacular sense of communicated knowledge, and affidavits are frequently made, and pleadings and other documents verified, on "information and belief." *See BELIEF*.

§ 19. **In the French law.**—The "act" (*q. v.*) containing the depositions of accusing witnesses in criminal cases.

INFORMATION, (defined). 12 Conn. 452.
— (in United States constitution). 3 Dall. (U. S.) 490.

INFORMATION AND BELIEF, (in an affidavit). 6 Barn. & C. 240, 244; 4 Dowl. & Ry. 180, 181.

INFORMATION, KNOWLEDGE OR, (in an answer). 3 Johns. (N. Y.) Ch. 297.

INFORMATION IN THE NATURE OF A QUO WARRANTO.—*See INFORMATION*, § 17; *QUO WARRANTO*.

INFORMATION IN THE NATURE OF A QUO WARRANTO, (who may file). 53 Mo. 97.

INFORMATION OF INTRUSION.
—*See INFORMATION*, § 8.

INFORMATUS NON SUM.—I am not informed, or, I have no instructions.—*See NON SUM INFORMATUS*.

INFORMER.—A person who brings an action or takes some other proceeding for the recovery of a penalty of which the whole or part goes to him.

§ 2. **Common.**—A common informer is a person who sues for a penalty which is given to any person who will sue for it, as opposed to a penalty which is only given to a person specially aggrieved by the act

complained of. 3 Bl. Com. 161; Guardians of St. Leonard's v. Franklin, 3 C. P. D. 377; Girdlestone v. Brighton Aquarium Co., 3 Ex. D. 137. *See ACTION*, § 9; *PENALTY*.

INFORMER, (who is). 1 Esp. 144.
— (in 14 Stat. at L. 546). 12 Ct. of Cl. 578, 593.

INFORTIATUM.—The second or "middle part" of the three parts of the Pandects of Justinian.

INFORTUNIUM, HOMICIDE PER.
—Where a man doing a lawful act, without intention of hurt, unfortunately kills another. *See HOMICIDE*, § 3.

INFRA.—Below; underneath; within. This word occurring by itself in a book refers the reader to a subsequent part of the book, like *post*. It is the opposite of *ante* and *supra* (*q. v.*)

INFRA ÆTATEM.—Within or under age; a minor.

INFRA ANNOS NUBILES.—Under marriageable years; not yet of marriageable age.

INFRA ANNUM LUCTUS.—Within the year of mourning.

INFRA BRACHIA.—Within her arms. A term formerly applied to a husband *de jure* as well as *de facto*, *i. e.* after the marriage had been consummated, in which case only could she have an appeal for his murder. *See APPEAL*, § 3.

INFRA CIVITATEM.—Within the State.

INFRA CORPUS COMITATUS.—Within the body of the county.

INFRA DIGNITATEM CURIÆ.—Below the dignity of the court. A bill in equity is demurrable on the ground of the triviality of the matter in dispute, as being below the dignity of the court. *See DE MINIMIS NON CURAT LEX*.

INFRA FUROREM.—During madness, while in a condition of insanity.

INFRA HOSPITIUM.—Within the inn. When a traveler's baggage comes *infra hospitium*, *i. e.* in the care and under the custody of the inn-keeper, the latter's liability attaches.

INFRA JURISDICTIONEM.—Within the jurisdiction.

INFRA METAS.—Within the bounds or limits. *Infra metas forestæ*, within the bounds of the forest. *Infra metas hospitii*, within the limits of the household.

INFRA REGNUM.—Within the realm.

INFRA SEX ANNOS, NON ASSUMPSIT, (plea of). 2 Hill (N. Y.) 59.

INFRACTION.—Breach of a contract, or violation of a compact or law, is sometimes so called.

INFRINGEMENT.—When a person does an act which he has no right to do, and thereby interferes with the right of another person, he is said to infringe that right. Thus, when a person manufactures an article protected by a patent, or prints a book protected by copyright, or makes use of a trade mark without having the right to do so, he is said to infringe the patent, copyright, or trade mark. The remedy is an injunction to restrain future infringements, and recovery of the damages caused or profits made by past infringements (2 Steph. Com. 32); but not both damages and profits; *Neilson v. Betts*, L. R. 5 H. L. 1.

INFUGARE.—To put to flight. Leg. Canuti c. 32.

INFULA.—A coif, or a cassock.—*Jacob*.

INGE.—Meadow, or pasture.—*Jacob*.

INGENIUM.—(1) Artifice; trick; fraud; (2) an engine, machine, or device.—*Spel. Gloss.*

INGENUITAS.—Liberty given to a servant by manumission. Leg. H. 1, c. 89.

INGENUITAS REGNI.—The commonalty of the British kingdom.—*Cowell*.

INGENUUS.—In the Roman law, a person who, immediately that he was born, was a free person. He was opposed to *libertinus*, or *libertus*, who having been born a slave was afterwards manumitted or made free. It is not the same as the English law term *generosus*, which denoted a person not merely free but of good family. There were no distinctions among *ingenui*; but among *libertini* there were (prior to Justinian's abolition of the distinctions) three varieties, namely: Those of the highest rank, called *Cives Romani*; those of the second rank, called *Latini Juniani*; and those of the lowest rank, called *Dediticii*.—*Brown*.

INGRATITUDE.—In the Roman law, ingratitude was, and in the French law is, but in the English law is not, a sufficient cause for revoking a donation or gift of property, or of liberty.

INGRESS, EGRESS, and REGRESS.—Free entry into, going forth of, and returning from a place.

INGRESSU.—An abolished writ of entry. It was also called *præcipe quod reddat*.—*Cowell*.

INGRESSUS.—The relief which an heir at full age paid to the head lord for entering upon the fee, &c.—*Blount*.

INGROSSATOR MAGNI ROTULI.—Clerk of the pipe; a former Exchequer officer.

INGROSSING.—Writing the fair copy of a deed or instrument for the formal execution of it by the parties thereto. See **ENGROSSING**.

INHABITANCY, (what is not). 1 Str. 51.

— (what is conferred by). 5 Dowl. & Ry. 597.

— (distinguished from "domicile"). 8 Wend. (N. Y.) 134, 140.

— (synonymous with "residence," or "dwelling"). 10 East 516.

INHABITANT.—A dweller or householder in any place. See **COURT LEET**; **CUSTOM**, § 4; **DOMICILE**; **EASEMENT**; **HUNDRED**; **POOR**; **RECREATION**; **RESIDENCE**.

INHABITANT, (defined). 1 Dall. (U. S.) 152, 153; 2 *Id.* 92; 12 Pet. (U. S.) 318; 2 Pet. (U. S.) Adm. 450; 4 Ala. 622, 630; 73 Ind. 484; 5 Pick. (Mass.) 379; 3 Zab. (N. J.) 517, 527; 20 Johns. (N. Y.) 211; 4 Wend. (N. Y.) 602, 603; 10 Ves. 339; Love. Wills 266.

— (who is). 1 Wheel. Am. C. L. 107; Amb. 422; 3 Atk. 577; 5 Dowl. & Ry. 595; 12 East 338; 8 Mod. 50.

— (in a statute). 27 Conn. 9; 32 *Id.* 53; 6 Ind. 83; 37 Me. 369; 1 Barn. & C. 136; 12 East 346; L. R. 9 C. P. 261.

— (under attachment act). 1 Dall. (U. S.) 158, 480; 5 Mas. (U. S.) 35; 3 Yeates (Pa.) 55; 4 *Id.* 241.

— (in divorce act). 1 C. E. Gr. (N. J.) 107.

— (in school act.). 1 Dutch. (N. J.) 180.

— (in State constitution). 122 Mass. 594; 124 *Id.* 132, 144.

— (may comprehend alien). 7 Mass. Sup. 525.

— (when corporation is). 5 Cranch (U. S.) 61, 89; 3 Mas. (U. S.) 158; 28 Ga. 122; 12 Cush. (Mass.) 60; 15 Serg. & R. (Pa.) 177.

— (when corporation is not). 3 Conn. 15, 24.

— (distinguished from "resident"). 40 Ill. 197; 2 Gray (Mass.) 484, 490; 5 Pick. (Mass.) 370; 1 Bosw. (N. Y.) 683.

— (as synonymous with "resident"). 3 Conn. 24; 40 Ill. 197; 8 Wend. (N. Y.) 134, 140.

— (as synonymous with "occupier"). 3 T. R. 523.

INHABITANT OF THE PARISH, (in a statute). Com. 535.

INHABITANT, TAXABLE, (who is). 48 Barb. (N. Y.) 51.

INHABITANTS, (in a grant from congress). 6 Ind. 83.

— (in a grant of lands). L. R. 7 Ch. D. 735.

INHABITANTS, (in a statute). 1 Dall. (U. S.) 52, 59; 10 Wend. (N. Y.) 186; 12 R. I. 435; Cowp. 81; 12 East 358.

— (means "legal voters"). 13 Otto (U. S.) 683.

— (synonymous with "burgesses"). 9 Barn. & C. 424, 432.

— (when do not acquire a settlement). 2 Conn. 20, 22.

INHABITANTS AND PARISHIONERS, (election by). 14 Ves. 24.

INHABITANTS OF A NEIGHBORHOOD, (in a grant). 10 Pick. (Mass.) 367.

INHABITANTS, RESIDENT, (in a statute, synonymous with "taxable inhabitants"). 13 Johns. (N. Y.) 444.

INHABITANTS, TO THE POOR, (in a devise). Amb. 422.

INHABITED HOUSE DUTY.—A tax assessed in England on inhabited dwelling-houses, according to their annual value, (Stats. 14 and 15 Vict. c. 36; 32 and 33 Vict. c. 14, § 11,) and is payable by the occupier, the landlord being deemed the occupier where the house is let to several persons. (Stat. 48 Geo. III. c. 55, schedule B.) Houses occupied solely for business purposes are exempt from duty, although a caretaker may dwell therein, and houses partially occupied for business purposes are to that extent exempt. Customs and Inland Revenue Act, 1878, § 13. See *Chapman v. Royal Bank of Scotland*, 7 Q. B. D. 136; and title **LODGER**.

INHABITING OR SOJOURNING, (in Statute 35 Geo. III.) 10 East 29.

INHABITING WITHIN A PARISH, (a ship registered and laying at a port is not). 8 East 457.

INHERENT POWER.—An authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another.—*Bouvier*.

INHERETRIX.—The old term for "heir-ess." Co. Litt. 13a.

INHERIT, BE DISABLED TO, (in a statute). 1 Str. 353.

INHERITABLE.—That which is capable of inheriting, *i. e.* of taking land by descent. (Co. Litt. 10a.) Thus, "blood inheritable," in the old books, means a capacity of inheriting by reason of consanguinity. (*Id.* 12a. See **BLOOD**.) "Inheritable" is applied to the person, "descendible" to the estate or property. See **FREEHOLD**.

INHERITANCE.—That which descends to the heir of the owner on his death intestate. (Fee-simple "is called in Latin *feodum simplex*, for *feodum* is the same that inheritance is," Litt. § 1; see,

also, § 9, and **FEE**.) The term is not often used except in the expression "estate of inheritance" (see **ESTATE**), and in the following phrases:

§ 2. "No man can institute a new kind of inheritance not allowed by the law." Co. Litt. 13a. See **DESCENT**.

§ 3. "If a man buy divers fishes . . . and put them in his pond, and dyeth, in this case the heire shall have them, and not the executors, but they shall goe with the inheritance." *Id.* 8a.

§ 4. "**Inheritance**" — "**Hereditament**."—"Inheritance" is also used in the old books where "hereditament" is now commonly employed. Thus, Coke divides inheritance into corporeal and incorporeal (*Id.* 47a), into real, personal and mixed (*Id.* 1b), and into entire and several (*Id.* 164b). As to these divisions, see **HEREDITAMENT**.

§ 5. **Several inheritance**.—The phrase "several inheritance," however, seems to be used in three senses: (1) In the sense explained under **HEREDITAMENT**, § 7; (2) in the sense of a sole estate, as opposed to an estate of coparcenery or other joint estate. Thus, "if a partition be made betweene two coparceners of one and the selfesame land, that the one shall have the land from Easter untill Lammas to her and her heires, and the other shall have it from Lammas till Easter to her and her heires, or the one shall have it the first yeare, and the other the second yeare, *alternis vicibus*, &c., there it is one selfesame land wherein two persons have severall inheritance at severall times" (*Id.* 4a); (3) to denote an estate free from the incident of survivorship, as opposed to joint tenancy. Thus, "if lands be given to two men and to the heires of their two bodies begotten, in this case the donees have a joint estate for term of their two lives, and yet they have severall inheritances." (Litt. § 283.) As to the meaning of this, see **ESTATE TAIL**, § 4.

INHERITANCE, (defined). 4 Vr. (N. J.) 387, 413.

— (what is). 7 East 106.

— (distinguished from "hereditament").

11 Mod. 103.

— (in a deed). 12 Serg. & R. (Pa.) 271.

— (in a devise). Hob. 2.

— (in a statute). 36 Cal. 329, 332

INHERITANCE, TRUSTEES OF, (in a will). 1 Bos. & P. N. R. 116.

INHERITANCE ACT.—See DESCENT, § 6.

INHERITING, (in a will). 67 Ill. 419.

INHIBITION.—

§ 1. In English law.—A writ to forbid a judge's proceeding in a cause that lies before him. It issues out of a higher court to an inferior, and is similar to a prohibition (*q. v.*)

§ 2. Land registry.—Under the English Land Transfer Act, 1875, regulating the registration of land, an inhibition is an order or entry on the register, inhibiting or forbidding for a given time, or until further order, any dealing with lands or charges registered under the act. (§ 57.) It resembles an injunction. Charley's Real P. Acts, 216. See CAUTION; RESTRICTION.

§ 3. In ecclesiastical law, an inhibition is (1) a writ forbidding a judge from further proceeding in a case depending before him, as where an appeal is brought against a sentence pronounced by him. (Phillim. Ecc. L. 1274.) In appeals to the Privy Council, the inhibition and monition for process (see PROCESS) issue simultaneously. (Macph. P. C. Pr. 175.) (2) An order inhibiting or forbidding an incumbent to perform any service of the church or otherwise exercise the cure of souls for a certain period, or until he obeys a certain monition or order. Public Worship Regulation Act, 1874, § 13; Order in Council, 28th June, 1875, form 25.

§ 4. Inhibition and citation.—Under the former practice of the Privy Council in admiralty appeals, as soon as the petition of appeal had been lodged an inhibition and citation might be issued, prohibiting the court below, and the respondent, from proceeding in the cause pending the appeal, and citing the respondent to enter an appearance to the appeal. (Wms. & B. Adm. Pr. 314.) Relaxation of the inhibition was a kind of writ dissolving the inhibition in cases where the appeal had not been prosecuted with due diligence. (*Id.* 318.) Admiralty appeals now lie to the Court of Appeal, (Judicature Act, 1873, § 18; Judicature Act, 1875, § 4,) and this practice is therefore obsolete.

§ 5. In the Scotch law, a process to restrain the sale of land in prejudice of a debt; also, a writ to prohibit credit being given to a man's wife.

INHOC, or INHOKE.—Any corner or part of a common field ploughed up and sowed with oats, &c., and sometimes fenced in with a dry hedge, when the rest of the field lies fallow. —*Kenn. Glas.*

Iniquum est aliquem rei suæ esse judicem. In propria causa nemo judex sit (12 Co. 13): It is unjust for any one to be judge in his own case. No one should be a judge in his own cause. See *Dimes v. G. J. C. Co.*, 3 H. L. Cas. 759.

Iniquum est ingenuis hominibus non esse liberam rerum suarum

alienationem (Co. Litt. 233a): It is unjust that freemen should not have the free disposal of their own property.

INITIAL.—LATIN: *initium*, a beginning.

That which *begins* or stands at the *beginning*. The first letter of a man's name. A person may bind himself by signing a written instrument with his *initials*, as effectually as by signing his name in full. (1 Den. (N. Y.) 471.) An initial letter of a middle name is no part of the name, (4 Watts (Pa.) 329; 1 Hill (N. Y.) 102,) and the omission or misstatement of such name will be no ground of objection. (26 Vt. 599; 8 Tex. 376; 14 *Id.* 402.)—*Burrill*.

INITIALIA TESTIMONII.—In former times, before examining a witness in chief, in Scotland, he was first examined as to his disposition towards the parties, whether he bore ill-will to either of them, or had been prompted what to say, or had received any bribe. It is somewhat similar to our *voir dire* (*q. v.*)

INITIALS, (indorsed upon a bank check). 6 Wend. (N. Y.) 443.

— (of Christian name, when sufficient). 6 Dowl. & Ry. 626.

— (of middle name, in a deed). 14 Pet. (U. S.) 322.

— (of *non est inventus*, upon a *capias*). 1 Nott. & M. (S. C.) 171.

— (of witness to a will). 5 Johns. (N. Y.) 144.

INITIATE, TENANT BY CURTESY.—The husband is so called, when a child is born, capable of inheriting the land subject to his curtesy. See CONSUMMATION.

INJUNCTION.—

§ 1. An order, judgment or writ, by which a party to an action is required to do, or refrain from doing, a particular thing.

§ 2. **Restrictive — Mandatory.**—Injunctions are either restrictive (preventive) or mandatory. Thus, an injunction restraining a defendant from causing nuisance, or disturbing an easement, or committing waste, or infringing a patent, is a restrictive injunction, while an injunction ordering a defendant to take down or remove a wall or other obstruction, is a mandatory injunction, or mandatory order, or, more accurately, a *mandamus*. (*Krehl v. Burrell*, 7 Ch. D. 551; *Beddoe v. Beddoe*, 9 *Id.* 89; *Costa Rica v. Strousberg*, 11 *Id.* 323; *Aslatt v. Corp. of Southamp.*

ton, 16 *Id.* 143. As to the old English rule, see Dan. Ch. Pr. 1462; Haynes Eq. 259; Snell Eq. 451.) Mandatory injunctions are rare in American practice.

§ 3. **Provisional and temporary.**—Injunctions are either *interim*, provisional (interlocutory or temporary) or perpetual. Provisional injunctions are such as are granted on interlocutory applications, and continue until a certain period, *e. g.* until the trial of the action. The object of an interlocutory injunction is to preserve the property in dispute with the least injury to all parties, until their rights can be finally determined. Perpetual injunctions are such as form part of the judgment or order made at the trial or hearing of the action, and, as their name denotes, are not restricted as to time.

§ 4. **Interim order.**—Formerly, in cases of great urgency, an injunction might be obtained in England *ex parte*, but this is not now usually done, the practice in such cases being to grant what is called an *interim* order or injunction, by which the defendant is restrained until after a particular day named, liberty being given to the plaintiff to serve notice for an injunction for the day before the day so named. Dan. Ch. Pr. 1518; Hunt. Suit 140.

§ 5. Where a person is sued at law under circumstances which give him a defence sustainable only in a court of equity, the Court of Chancery will give effect to this defence by granting an injunction restraining the plaintiff from continuing his action. This mode of proceeding was abolished in England by the Judicature Act, the provisions of that act relating to equitable defences having rendered it inapplicable. Jud. Act, 1873, § 24. See EQUITY, § 7. Also, CAIRNS' ACT; COPYRIGHT; EASEMENT; INFRINGEMENT; MANDAMUS; PATENT; RESTRAINING ORDER; SPECIFIC PERFORMANCE; UNDERTAKING.

INJUNCTION, (province of). Sax. (N. J.) 157.

INJUREL PARTY, (in crimes act). 17 Cal. 63.

INJURIA—INJURY.—

§ 1. In the technical sense of the word, an injury is where a right has been infringed. Hence, "injury" is opposed to "damage," because a right may be infringed without causing pecuniary loss (*injuria absque damno*). Thus, "the pollution of a clear stream is to a riparian proprietor below both injury and damage,

whilst the pollution of a stream already made foul and useless by other pollutions is an injury without damage, which would, however, at once become both injury and damage on the cessation of the other pollutions." Pennington v. Briesop Hall Coal Company, 5 Ch. D. 772. See DAMNUM ABSQUE INJURIA.

§ 2. **Legal, and equitable.**—Injuries are either legal or equitable. Legal injuries, or those cognizable by the common law, are divided into breaches of contracts and torts. (See those titles.) Equitable injuries, or those cognizable only by courts of equity, include breaches of trust, equitable waste, and certain kinds of fraud. Equitable injuries must be distinguished from equitable remedies; thus, specific performance and injunction are equitable remedies for legal injuries, while damages are the ordinary legal remedy.

INJURIA, (defined). 11 Wend. (N. Y.) 409.

INJURIA ABSQUE DAMNO.—See INJURIA, § 1.

Injuria illata judici, seu locum tenenti regis videtur ipsi regi illata maxime si fiat in exercentem officium (3 Inst. 1): An injury offered to a judge, or person representing the king, is considered as offered to the king himself, especially if it be done in the exercise of his office.

Injuria non excusat injuriam: One wrong does not justify another. Or to use a colloquial expression, two wrongs will not make a right. See 6 El. & B. 47.

Injuria non præsumitur (Co. Litt. 232b): Injury is not presumed.

Injuria propria non cadet in beneficium facientis: One's own wrong shall not fall to the advantage of the doer of it.

INJURIES TO PROPERTY, (in the code). 59 Barb. (N. Y.) 364.

INJURIOUSLY AFFECTED, (in lands clauses act). L. R. 7 H. L. 243.

—— (in railway act). L. R. 2 H. L. 175, 207.

INJURY, (what is). 17 Conn. 302; Willes 581.

—— (to property, what is). 13 How. (N. Y.) Pr. 222.

—— (in crimes act). 5 Mich. 10, 22.

—— (in the code). 5 Robt. (N. Y.) 607.

—— (when willful). 3 Abb. (N. Y.) Pr. 259.

INJURY TO THE PROPERTY OF ANOTHER, (what is not). 5 Jones (N. C.) L. 362.

Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere (3 Co. 117 b): It is unjust to decide or respond as to any particular part of a law without examining the whole of the law.

INLAGARE.—To admit or restore an outlaw to the benefit of the law; to in-law, or render law-worthy.—*Cowell*.

INLAGARY, or INLAGATION.—A restitution of an outlaw to the protection and benefit of the law.—*Cowell*; *Bract*. 1, 3. tr. 2, c. 14.

INLAGH.—A person within the law's protection, contrary to *utlagh*, an outlaw.—*Cowell*.

INLAND.—Demesne land; that which was let to tenants being denominated "outland" (*utland*).—*Domesd*.

INLAND BILL OF EXCHANGE.—See **BILL OF EXCHANGE**, § 9.

INLAND BILL OF EXCHANGE, (defined). 2 Pet. (U. S.) 688 App.; *Chit. Bills* 11.

—(what is). 5 Johns. (N. Y.) 375.

INLAND NAVIGATION, (does not include the great lakes). 24 How. (U. S.) 1.

INLAND TRADE.—Trade wholly carried on at home, as distinguished from "commerce" (*q. v.*)

INLAND WATERS, (what are). 10 Wall. (U. S.) 577.

INLANTAL — INLANTALE.—Demesne or inland, opposed to *delantal*, or land tenanted.—*Cowell*.

INLEADED.—Insnared. *Inst.* 247.

INLEGIARE.—To admit a person to the protection of the law, after undergoing a legal punishment for a delinquency.

INLET, (in a statute). 9 N. Y. 580.

INMATE.—One who lodges or dwells in the same house with another, occupying different rooms, but using the same door for passing in and out.—*Cowell*; *Jacob*; *Webster*.

INN.—A public house, or tavern. A house where the traveler is furnished with everything he has occasion for while on his way. (*Thomson v. Lacy*, 3 Barn. & Ald. 283.) A mere boarding or lodging-house is not an inn. See **BOARDING-HOUSE**.

INN, (defined). 7 Ga. 306; 33 Cal. 557; 35 Conn. 185; 9 B. Mon. (Ky.) 72, 74; 4 Humph. (Tenn.) 179, 182.

INN, (distinguished from "boarding-house") 2 E. D. Smith (N. Y.) 149.

—(distinguished from "private boarding-house"). 33 Cal. 583.

—(what is). 2 Daly (N. Y.) 200.

—(what is not). 2 Daly (N. Y.) 15; 1 Hilt. (N. Y.) 195; 54 How. (N. Y.) Pr. 332; 6 Wend. (N. Y.) 627; 4 Campb. 76; 12 Mod. 254.

—(synonymous with "tavern"). 3 Hill (N. Y.) 150.

—(synonymous with "tavern" and "hotel"). 54 Barb. (N. Y.) 316.

INN, COMMON, (a hotel for transient guests is). 4 Duer (N. Y.) 116.

INN OR TAVERN, (a licensed grocery in New York city is). 2 City Hall Rec. 53.

INNAMIUM.—A pledge.

INNAVIGABLE.—In insurance law, not navigable. A vessel is said to be innavigable when, by a peril of the sea, she ceases to be navigable, by irremediable misfortune. She is relatively *innavigable* when it will require almost as much time and expense to repair her as to build a new one. 3 Kent Com. 323 n.

INNER HOUSE.—The name given to the chambers in which the first and second divisions of the Court of Sessions in Scotland hold their sittings. See **OUTER HOUSE**.

INNHOLDER, (synonymous with "tavern-keeper"). 3 Hill (N. Y.) 150.

INNINGS.—Lands recovered from the sea; when rendered profitable they are termed *gainage* lands.—*Cowell*.

INNKEEPER.—

§ 1. A common innkeeper—including the keeper of every tavern or coffee-house in which lodging is provided—is bound to receive and entertain every traveler who presents himself for that purpose and is ready to pay his expenses, provided there be sufficient room in the inn, and no impropriety of conduct in the traveler himself.

§ 2. He is also responsible for the goods and chattels brought by any traveler to his inn, unless they are stolen from the traveler's own person, or by his own servant, or are lost by his own negligence. In England, by the Stat. 26 and 27 Vict. c. 41, no innkeeper is liable for the loss or injury of any goods (not being a horse or carriage) to a greater amount than £30, except they are stolen, lost or injured through the wilful act, default or neglect of himself or his servant, or unless they have been

deposited with him expressly for safe custody. A copy of the act must be conspicuously exhibited in the inn. (2 Steph. Com. 84.) Similar statutes exist in many of the States. See BAILMENT; CARRIER; CARRIERS ACT.

§ 3. **Innkeeper's lien.**—An innkeeper has a lien on his guest's goods for payment of charges incurred by him, and he may sell them in satisfaction if they are left for the statutory period without the charges being paid, provided he advertises notice of the intended sale in the manner provided by the statute. See LIEN.

INNKEEPER, (defined). 7 Am. Dec. 449 n.; Story Bailm. 464.

— (who is). 2 Daly (N. Y.) 200; 3 Barn. & Ald. 285; 4 Campb. 77.

— (who is not). 1 Morr. (Iowa) 184; 3 Bush (Ky.) 681; 9 B. Mon. (Ky.) 72, 74; 118 Mass. 275; 54 How. (N. Y.) Pr. 327, 329; Carth. 417; 1 Salk. 387.

— (is not a trader under the bankrupt laws). 2 Chit. 651; 12 Mod. 255.

— (synonymous with "tavern-keeper"). 7 Ga. 306.

— (liability of, for goods of guest). 53 Me. 163; 9 Pick. (Mass.) 280; 14 Johns. (N. Y.) 175; 8 Wend. (N. Y.) 547; 21 Id. 282; 1 Hayw. (N. C.) 40; 1 McCord (S. C.) 509; 2 Wheel. Am. C. L. 144; 8 Co. 32; 2 Dyer 158 b; 5 T. R. 273.

INNOCENCE, PRESUMPTION OF.—A presumption in criminal law, and which presumption is drawn by the common law in favor of accused persons. The government, in prosecuting, presumes the guilt, but the jury (as expressing the common law) presume the innocence until the guilt is proved. The presumption may be shifted by statute, at least as regards offences of the smaller character, such as misdemeanors.

INNOCENT CONVEYANCES, as opposed to *tortious* conveyances, are those which convey only that amount of estate which the conveying party has in him to grant, and subject to all such conditions and provisions as the estate is subject to in his hands. Generally, all conveyances at the present day are innocent.

INNOCENT PURCHASER, (defined). 43 Miss. 349.

INNOMINATE CONTRACTS.—Literally are the "unclassified" contracts of Roman law. They are contracts which are neither *re, verbis, literis*, nor *consensu* simply,

but some mixture of or variation upon two or more of such contracts. They are principally the contracts of *permutatio, de aestimato, precarium*, and *transactio*.—Brown.

INNONIA.—An inclosure.—*Spel. Gloss.*

INNOTESCIMUS.—See INSPEXIMUS.

INNOVATION.—In the Scotch law, an exchange of one obligation for another, so as to make the second come in place of the first. The same as novation (*q. v.*)—*Bell Dict.*

INNOXIARE.—To purge one of a fault and make him innocent. Leg. Ethelred. c. 10.

INNS OF CHANCERY.—The buildings in London known as Clifford's Inn, Clement's Inn, New Inn, Staples' Inn, and Barnard's Inn. They were formerly a sort of collegiate houses, in which law students learnt the elements of law before being admitted into the inns of court (*q. v.*), but they have long ceased to occupy that position. 1 Steph. Com. 16 *et seq.*; Fortesc. ch. xlix.

INNS OF COURT.—Certain private unincorporated associations in England, in the nature of collegiate houses, having the exclusive privilege of calling to the bar, *i. e.* conferring the rank or degree of barrister (*q. v.*) They are: The Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. They have a common council of legal education for giving lectures and holding examinations. 1 Steph. Com. 19 *et seq.* See BENCHER; INNS OF CHANCERY; MOOT.

INNUENDO.—**LATIN:** *innuere*, to nod to, hint, intimate.

That part of an indictment in a criminal proceeding for libel, or of a pleading in an action for libel, or slander, which connects the alleged libel with its subject, or explains the meaning of words which are not on the face of them libelous. Thus, if the libel complained of consisted of these words in a circular, "A. B. is a fit person to be a member of a certain society," and it was proved that the person who sent round the circular was the secretary of a society for the protection of tradesmen against swindlers, and that when he wrote to warn his correspondents against any person, he said, "He is a fit person to be a member of our society," it would be necessary in the declaration or statement of claim, after setting out the words "A. B. is a fit person to be a member of a certain society," to add, "meaning thereby 'He is a swindler;'" these words form the innuendo. Shortt Copy. and L. 515, 547; Craft v. Boite, 1 Wms. Saund. 246 b.

INNUEENDO, (defined). 1 Blatchf. (U. S.) 588; 8 Ala. 466; Minor (Ala.) 93; 4 Conn. 17, 34; 4 N. H. 110, 113; 3 Gr. (N. J.) 249; 2 Harr. (N. J.) 15; 1 Den. (N. Y.) 347; 16 Wend. (N. Y.) 17; Wright (Ohio) 121; 8 Wheel. Am. C. L. 124.

— (what is). 12 Conn. 290.

— (office of). 2 Harr. & J. (Md.) 363; 2 Hill (N. Y.) 507; 15 Wend. (N. Y.) 232; 11 Serg. & R. (Pa.) 343; 1 Ld. Raym. 256; 1 Saund. 243 n.

— (effect of). 16 Wend. (N. Y.) 22.

— (distinguished from "colloquium"). 4 Am. Dec. 349 n.; 7 Johns. (N. Y.) 359.

— (defect not supplied by). 2 Hill (N. Y.) 318; 5 Johns. (N. Y.) 430.

— (words uncertain not supplied by). 4 Com. Dig. 683.

— (in a declaration). 4 Co. 17; Cro. Jac. 126.

— (in an information for libel). 2 Cowp. 679.

— (in an information for perjury). 2 Salk. 513.

INOFFICIOUS TESTAMENT.—

A will not in accordance with the testator's natural affection and moral duties. Wms. Ex. (7 edit.) 38.

INOPS CONSILII.—Wanting advice; destitute of counsel.

INORDINATUS.—An intestate.

INPENY and OUTPENY.—Customary payments on alienation of tenants, &c.—*Spel. Gloss.*

INQUEST.—**NORMAN-FRENCH**: *enquete*, from *enquerre*, to inquire into. Britt. 3b.

§ 1. Originally meant the same as inquisition (*q. v.*), (Littleton (§ 368) also uses it in the sense of "jury"), but at the present day it is usually used to signify an inquiry held by a jury before a coroner, as to the death of a person who has been slain, or has died suddenly, or in prison, or under suspicious circumstances. It is held *super visum corporis*, *i. e.* after the jury have viewed the body of the deceased, and the evidence is given on oath. If the jury, by their verdict or inquisition, find a person guilty of murder or other homicide, such an inquisition is, in England, in all respects equivalent to an indictment (*q. v.*), (2 Steph. Com. 637; 4 *Id.* 360; Archb. Cr. Pl. 121); but such is not the case in America. See **CORONER**, § 1.

§ 2. The term "inquest" is also applied to a proceeding allowed in New York, by which, upon an issue of fact in an action at common law, a cause may be taken up out of its regular order, on motion of the

plaintiff, and a trial had, in which no affirmative defence is admitted. This proceeding is authorized where the defendant has failed to file an affidavit that he has a good defence upon the merits, and has also failed to verify his answer. (N. Y. Code Civ. Pro. § 980.) The defendant may appear, and object to the evidence offered by the plaintiff, except to rulings of the court, and cross-examine the plaintiff's witnesses; but he cannot introduce testimony on his own behalf, nor make out, even by cross-examination, an affirmative defence. The name "inquest" is also given, though perhaps incorrectly, to a trial, upon the default of the defendant in failing to appear when the cause is called in its order for trial; even where, a jury being held to be waived by the defendant's failing to appear, such trial is had before the court without a jury. But, in the strict meaning of the word, an "inquest" seems to imply the summoning and action of a jury.—*Abbott*.

§ 3. A grand jury is also sometimes called the "grand inquest."

INQUEST, (defined). 6 How. (N. Y.) Pr. 119

INQUEST OF OFFICE, or simply "office," as it is termed in the old books, is a prerogative remedy for the benefit of the sovereign, which was formerly much in use. It is an inquiry made by a jury before a sheriff, coroner, escheator, or other government officer, or by commissioners specially appointed, concerning any matter that entitles the sovereign to the possession of lands or tenements, goods or chattels, *e. g.* by reason of an escheat, forfeiture, idiocy, &c. (See **INQUISITIO POST MORTEM**; **INQUISITION**.) In England, these offices are of two sorts, either of entitling, or of instruction.

§ 2. **Office of entitling**.—An office of entitling (which formerly issued out of Chancery,) is used where the crown does not become entitled to the property until after an office has been taken (Chit. Prerog. 246); thus, if the crown claims the land of an idiot, the person must first be found an idiot by office. (*Id.* 250; Staunf. 55.) Formerly in cases where the crown became entitled to the possession of land under such circumstances that a common person could not have obtained possession without making an entry on the land (as where a tenant committed a forfeiture giving the lord a right of re-entry), the crown could not obtain possession without an inquest of office. This, however, is no longer necessary. Stat. 22 and 23 Vict. c. 21, § 25.

§ 3. **Office of instruction.**—The office of instruction (which formerly issued out of the Exchequer) is used in cases where an office is not necessary to entitle the crown, but merely for the better instruction of the officer before seizure, and to prevent hasty measures being adopted against the subject. Chit. Prerog. 247.

§ 4. As to the remedy of any person aggrieved by an office found, *see* **MONSTRANS DE DROIT**; **TRAVERSE**; and Crown Suits Act, 1865, § 52. As to "office" in the United States, *see* 1 Cai. (N. Y.) 426; 7 Cranch (U. S.) 603; 2 Kent Com. 16, 23.

INQUILINUS.—In the civil law, the hirer of a house in a city.

INQUIRE, (in a statute). 8 Wend. (N. Y.) 83.

INQUIRE, HEAR AND DETERMINE, (in the commission of oyer and terminer). 1 Chit. Cr. L. 143, 144.

INQUIRE INTO THE MERITS OF THE CAUSE, (in a statute). 1 Cow. (N. Y.) 85.

INQUIRENDO.—An authority given to some official person to institute an inquiry concerning the crown's interests.

INQUIRY.—

§ 1. In actions in the English High Court it frequently happens that certain facts subsidiary to the main question in issue can be conveniently ascertained out of court by a person appointed or directed to inquire into them. By the Judicature Acts general power is given to the court to refer any question in a cause to a referee for inquiry and report, (Jud. Act, 1873, § 56; Rules of Court, xxix. 4; *see* **REFeree**;) and this power is sometimes exercised by referring technical questions to architects, engineers, &c. But in the cases where an inquiry is usually directed, the practice differs according as the action is in the Chancery or the Queen's Bench Division.

§ 2. **Inquiries in chancery actions.**—In the Chancery Division an inquiry is usually directed in every action in which, after the court has pronounced an order, judgment or decree, it becomes necessary to ascertain in detail the facts of the case or the rights of persons interested. In such a case the order, decree, &c., directs an inquiry on those points to be taken in chambers. Thus, in an action for the administration of the estate of an intestate, the administration order almost invariably directs inquiries as to the heir-at-law, next of kin, real and personal estate, debts, &c., of the deceased; and in an action to restrain the continuance of an injury (*e. g.* the infringement of a patent), there is commonly an inquiry either as to the amount of damages sustained by the plaintiff, or as to the amount of profits made by the defendant in consequence of the acts complained of. The inquiries are taken before the chief clerk, who investigates the evidence adduced by the parties, and embodies the result in his certificate (*q. v.*)

§ 3. **Inquiries in Queen's Bench Division.**—In the Queen's Bench Division the procedure by inquiry is used in cases where the plaintiff has obtained judgment by default against the defendant for an unliquidated claim

(*e. g.* for damages), so that it is necessary to ascertain what is due to him; if the amount is substantially a matter of calculation (as in an action for the arrears of an annuity), an inquiry as to the amount is directed to be taken by a master of the court (Day C. L. P. Acts 121); in other cases, a writ of inquiry (*q. v.*) must issue. 12 Smith Ac. 144.

§ 4. **Inquiries in lunacy.**—In lunacy practice an inquiry is the proceeding in which the unsoundness of mind of an alleged lunatic and his incapacity to manage his affairs are investigated by the evidence of witnesses and the personal inspection of the alleged lunatic. The inquiry, which resembles the trial of an action (*see* **TRIAL**), is held before a Master in Lunacy (with a jury if the alleged lunatic demands one), by virtue of the Lord Chancellor's order for inquiry, which is now issued in each case of alleged lunacy in lieu of a special commission. But the Lord Chancellor may, under the Lunacy Regulation Act, 1862, § 4, direct an issue whether the alleged lunatic is of unsound mind, &c., to be tried in one of the superior courts of common law (now in the High Court) and the verdict of the jury has the same force as an inquisition. (Pope Lun. 44, 64.) A practice similar to this prevails in some of the American States. *See* **DE LUNATICO INQUIRENDO**; **LUNACY**. *See, also*, **COMMISSION**, § 8; **INQUISITION**, § 3; **TRAVERSE**.

§ 5. **Board of trade.**—There are many cases in which the English board of trade holds inquiries. Thus, when any persons have been killed or injured by any wrongful act, neglect or default in the management of a ship, the board of trade may institute an inquiry before a sheriff and jury, in which the board is plaintiff and the shipowners defendants. The board distributes the damages recovered by the inquiry in such manner (not exceeding £30 for each person killed or injured) as it thinks fit. Any person dissatisfied with the amount recovered by him may repay it and commence an action against the shipowner. *See* **LIMITATION OF LIABILITY**.

INQUISITIO POST MORTEM.—This was an inquest of office (*q. v.*) held upon the death of a tenant of the crown to inquire of what lands he died seised, who was his heir, and of what age, in order to entitle the crown to his marriage, wardship, livery, primer seisin, &c. After the abolition of the feudal tenures, the *inquisitiones post mortem* were held to inquire into cases of escheat, forfeiture, &c., of crown lands, (Chit. Prerog. 247; 2 Bl. Com. 68,) but they have now fallen into disuse, principally owing to the abolition of forfeiture (*q. v.*)

INQUISITION means (1) an inquiry by a jury, held before a sheriff, coroner, or board of commissioners; and (2) a formal document recording the result of the inquiry.

§ 2. The commonest instances of extrajudicial inquisitions at the present day are coroners' inquests and inquisitions to assess the value of land taken by a rail-

way or other company under compulsory powers. These latter are held in England and some of the States before the sheriff (or in some cases the coroner) of the county in which the lands are situated, and in other States before commissioners appointed to assess damages to the owners of lands so taken.

§ 3. Inquisitions are also held in the course of judicial proceedings, *e. g.* under writs of *elegit* and *extent* (*q. v.*) and in lunacy. In lunacy, "inquisition" sometimes means the same as "inquiry" (*q. v.*), but more generally it denotes the formal statement and finding under the hands and seals of the presiding officer and jury (if there was one) before whom the inquiry was held, giving the result of it, *e. g.* stating that the alleged lunatic is of unsound mind, and, according to the English form, "not sufficient for the government of himself, his manors, messuages, lands, tenements, goods and chattels," and the lunatic is then called a "lunatic by inquisition." *Elmer Pr. Lun.* 20; *Pope Lun.* 66. See *INQUEST*; *INQUEST OF OFFICE*; *INQUISITIO POST MORTEM*; *TRAVERSE*.

INQUISITOR.—Any officer, as a sheriff, coroner, &c., having power to inquire into certain matters.

INROLMENT.—See *ENROLMENT*.

INSANE, (in statute of limitations). 34 *Wis.* 117.

INSANITY is not, strictly speaking, a legal term, but it is commonly used to denote that state of mind which prevents a person from knowing right from wrong, and, therefore, from being responsible for acts which in a sane person would be criminal. (*Pope Lun.* 6, 19, 356.) Insanity may be total, or partial (where it is confined to certain subjects); or intermittent (where the attacks are separated by lucid intervals), and the question of responsibility depends upon whether the act was done under the influence of insanity or not. *Id.* 15; *Maudsley on Mental Disease, passim*.

§ 2. The term is also sometimes used with reference to the question whether a person has the mental capacity for entering into a contract, making a will, or the like. See *DELUSIONS*; *LUNATIC*.

§ 3. "Insane person," within the meaning of the English acts relating to the commissioners in lunacy, is a person who is either "a lunatic, an idiot, or a person of unsound mind, and a proper person to be taken charge of and detained under care and treatment" in a house, hospital, or other place for the reception of such persons. See 16 and 17 *Vict. c.* 96, schedules; *Pope Lun.* 19. See *COMMISSIONERS IN LUNACY*; *LUNATIC*.

INSANITY, (defined). 2 *Del. Ch.* 260; 2 *Park. (N. Y.) Cr.* 215, 219.

— (what is). 3 *Atk.* 173.

— (the test of). 16 *Barb. (N. Y.)* 259.

INSCRIPTIO.—In the civil law, a written accusation in which the accuser undertakes to suffer the punishment appropriate to the offence charged, if the accused is able to clear himself of the accusation.—*Calv. Lex.*; *Cod.* 9, 1, 10; *Id.* 9, 2, 16 and 17.

INSCRIPTIONES.—Written instruments by which anything was granted.—*Blount*.

INSENSIBLE.—A term used in pleading to signify unintelligible, and the rule relating to it is that if a pleading be insensible, owing to the omission of material words, &c., it is bad. *Steph. Pl.* 414.

INSENSIBLE, (when a deed is). 14 *East* 574

INSERT, (in statute concerning arbitrations) 17 *Ves.* 419.

INSETENTA.—An inditch, or grave in a ditch.

INSIDIATOIRES VIARUM.—Waylayers; highwaymen who lie in ambush.

INSIGNIA.—Ensigns or arms; distinctive marks; characteristics.

INSILIARIUS.—An evil counsellor.—*Cowell*.

INSILIUM.—Evil advice or counsel.—*Cowell*.

INSIMUL COMPUTASSENT.—They accounted together. A species of *assumpsit* so called, because one of the counts of the declaration alleged that the plaintiff and defendant had settled their accounts together, and that the defendant engaged to pay the plaintiff the balance, but had since neglected to do so.

INSIMUL TENUIT.—A species of the abolished writ of *formedon*, brought against a stranger by a copartner on the ancestor's possession.

INSINUATION.—In the civil law, registration amongst the public records. Insinuation of a will was its first production and the propounding it for probate.

INSOLVENT—INSOLVENCY.—

§ 1. A person is said to be insolvent when he is unable to pay all his debts in full; insolvency is the condition of such a person. Generally it results in bankruptcy, liquidation, or composition proceedings, or, if the person dies before they are taken, his estate may be administered, as an insolvent estate.

§ 2. **English insolvency acts.**—Formerly when none but traders were included in the bankruptcy law, occasional acts of parliament, called Acts of Insolvency, or Insolvent Acts, were frequently passed, "whereby all persons whatsoever, who are either in too low a way of dealing to become bankrupts, or not being in a mercantile state of life are not included within the laws of bankruptcy, are discharged from all suits and imprisonments, upon delivering up all their estate and effects to their creditors upon oath, at the sessions or assizes." (2 Bl. Com. 484.) Subsequently, various statutes were passed, providing for the discharge of persons imprisoned for debts, on their making a *cessio bonorum* for the benefit of their creditors, and by the act 53 Geo. III. c. 102, and subsequent acts, the principle was made into a system, administered by a court of record called the Court for the Relief of Insolvent Debtors. The first step was a petition by the prisoner for his discharge, or a petition by a creditor for the administration of the debtor's property; in either case a vesting order was made, by which all the debtor's property was vested in one or more assignees, (see ASSIGNEE, § 2,) and in due time the prisoner obtained his discharge. (*Id.* 488 n. (6). See PROTECTION.) The Court for the Relief of Insolvent Debtors was abolished and its jurisdiction transferred to the Court of Bankruptcy by the Bankruptcy Act, 1861, which made non-traders subject to the bankruptcy law. (See BANKRUPTCY, § 10.) It seems that the estates of some insolvent debtors are still in process of being wound up. 32 and 33 Vict. c. 83; Second Report of Legal Dep. Comm. 76.

§ 3. **American insolvency acts.**—Each of the several States has its own system of insolvency laws, following more or less closely the English statutes, but differing from them and from one another in matters of form and practice. Three times the operation of these laws has been suspended for a shorter or longer period by the enactment by congress, under the power conferred by the federal constitution, of general bankrupt laws, viz., in 1800, 1841 and 1867, but the latter act having been recently repealed, the various State insolvent laws are now in force.

INSOLVENCY, (defined). 2 Ind. 55, 57; 4 Cush. (Mass.) 127; 3 Gray (Mass.) 594, 595; 4 Hill (N. Y.) 652; 15 How. (N. Y.) Pr. 451; 15 N. Y. 200.

INSOLVENCY, (what constitutes). 1 Abb. (U. S.) 448; 2 Ben. (U. S.) 196; 3 *Id.* 153, 156; 7 Blatchf. (U. S.) 262; 20 Conn. 61; 1 Gr. (N. J.) Ch. 173; 19 La. Ann. 199.

— (when it becomes absolute). 4 Mass. 620.

— (what is not sufficient evidence of). 19 Johns. (N. Y.) 322; 3 Wend. (N. Y.) 614; 1 Nott & M. (S. C.) 295.

— (distinguished from "bankruptcy"). 5 Taunt. 548.

— (synonymous with "bankruptcy"). 8 Cranch (U. S.) 431.

— (synonymous with "inability to pay"). 32 How. (N. Y.) Pr. 233; 4 Robt. (N. Y.) 426.

— (as applied to corporations). 3 Allen (Mass.) 114.

— (in a statute). 13 Gratt. (Va.) 683.

— (in bankruptcy act). 3 Cranch (U. S.) 91; 1 Dill. (U. S.) 194, 203; 1 Pet. (U. S.) 439; 13 Wall. (U. S.) 47; 16 *Id.* 277, 599; 3 Dowl. & Ry. 218, 219.

— (in currency act, § 52, [13 Stat. 115]). 2 Woods (U. S.) 23, 24.

— (in duty act of 1790). 2 Wheat. (U. S.) 396, 424, 425.

— (in United States revised statutes). 13 Bankr. Reg. 283.

— (in act of congress). 9 Mass. 431; 16 *Id.* 55.

INSOLVENCY, CONTEMPLATION OF, (within the meaning of act of congress of 1841). 2 Pittsb. (Pa.) 115.

INSOLVENCY, NOTICE OF, (in a statute). 1 Campb. 492 n.; 1 Rose 362 n.

INSOLVENT, (when a trader is). 15 Bankr. Reg. 168.

— (who is not). 9 Cal. 46.

— (discharged from joint debts). 11 Johns. (N. Y.) 194.

— (need not be a bankrupt). 1 Doug. 92 n.

— (in 33 Geo. III. c. 54, § 10). 3 Sim. 421.

INSOLVENT CIRCUMSTANCES, (what constitutes). 1 McClell. & Y. 499.

— (in a statute). Wilberf. Stat. L. 122.

INSOLVENT DEBTOR, (in bankrupt act). 1 Abb. (U. S.) 440; 3 Ben. (U. S.) 525.

— (note made to secure his discharge void). 12 Johns. (N. Y.) 306.

INSOLVENT LAWS, (as to impairing the obligation of contracts). 4 Wheat. (U. S.) 201, 209; 6 *Id.* 131; 13 Mass. 4, 16; 2 Cow. (N. Y.) 626; 3 Paige (N. Y.) 414.

— (policy of). 4 Halst. (N. J.) 352, 354.

— (distinguished from "bankrupt laws"). 4 Wheat. (U. S.) 194.

— (power of the State to pass). 9 Pet. (U. S.) 330.

— (discharge under, of another State). 5 Halst. (N. J.) 208; Penn. (N. J.) 807; South. (N. J.) 192, 466.

INSOLVENT TRADER, (defined). 33 Cal. 620, 625.

— (who is). 4 Sawy. (U. S.) 158, 159.

INSPECTATOR.—A prosecutor or adversary.

INSPECTION.—**§ 1. Inspection of documents.—**

When a party to an action, or other proceeding in a court of record, has by his pleadings or otherwise admitted that he has in his possession any documents relating to the matters in question between the parties, any other party to the proceeding may give him notice to produce them for inspection. If he fails to comply with the notice, the party requiring production may apply to the judge for an order for inspection. See CONFIDENTIAL COMMUNICATIONS; DISCOVERY; PRIVILEGE; SEALING UP.

§ 2. Inspection of property.—In England, the High Court may make an order for the detention, preservation, or inspection of any property being the subject of an action, and for that purpose may authorize any person to enter on or into any land or building. See the Common Law Procedure Act, 1854, § 53; the Merchandise Marks Act, 1862, § 21; LIND. & JENK. 39. See, also, TRIAL; VIEW.

§ 3. As to the inspection of mines, see BOUNDARIES, § 4; BOUNDS.

§ 4. Trial by inspection was formerly resorted to when, for the greater expedition of a cause, some point or issue, being either the principal question, or one arising collaterally out of it, and being evidently the object of sense, was decided by the judges of the court upon the evidence of their own senses. It is long since obsolete.

INSPECTION LAWS, (State, not within the power granted to congress). 9 Wheat. (U. S.) 203.

INSPECTORS.—

§ 1. Officers whose duty it is to examine the quality of certain articles of merchandise, food, weights and measures, &c. Also, officers of the customs. As to whose duties, see 1 Story U. S. Laws, *passim*.

§ 2. In England, when the members of a partnership have been adjudicated bankrupt, although the separate creditors of each partner have no voice in the choice of a trustee under the joint adjudication, still they may apply to the court for the appointment of an inspector to protect their interests, *e. g.* by getting in the separate effects, inspecting books and papers relating to the separate estates, &c. ROBS. BANKR. 614. See JOINT; SEPARATE.

INSPECTORSHIP DEEDS.—See LETTER OF LICENSE.

INSPEXIMUS.—This is the name given in the old books to an exemplification of letters-patent or other record, because it begins with a recital, in the name of the crown, that "We have inspected the enrollment of certain letters-

patent," and then sets it out *verbatim*. A *constat* was a somewhat similar kind of exemplification, beginning with the words "*Constat nobis*," but was only granted where the party made affidavit that the original was lost. An *innotescimus* or *vidimus* was a copy of a charter of feoffment or other instrument not of record granted by the crown. Page's Case, 5 Co. 53 b. See EXEMPLIFICATION.

INSTALLATION.—The ceremony of inducting or investing with any charge, office, or rank, as the placing a bishop into his see, a dean or prebendary into his stall or seat, a clergyman into his church, or a knight into his order. See INAUGURATION; INDUCTION.

INSTALMENT.—A portion of a debt. When a debt is divided into two or more parts, payable at different times, each part is called an "instalment," and the debt is said to be payable by instalments. It is a frequent condition in bonds, warrants of attorney, &c. This word is also used in the old books in the sense of installation (*q. v.*)

INSTANCE.—Solicitation of an urgent character. Thus, in English ecclesiastical law, a cause of instance is one instituted at the solicitation of some party.

INSTANCE COURT.—See HIGH COURT OF ADMIRALTY; PRIZE COURT.

INSTANCE COURT, (when courts of common law have concurrent jurisdiction with). 18 Johns. (N. Y.) 257.

INSTANTER.—At once; immediately. Thus, a trial *instanter* is had where a prisoner between attainder and execution pleads that he is not the same who was attainted; and in certain other cases. (4 Steph. Com. (7 edit.) 468.) When a party is ordered to plead *instanter* he must plead the same day. See FORTHWITH.

INSTANTER, (meaning of, in pleading). 6 Com. Dig. 144; 1 Taunt. 342.

— (in rule of court). 2 Cow. (N. Y.) 601; 7 Id. 421; 19 Johns. (N. Y.) 270; 10 Wend. (N. Y.) 617.

INSTANTLY DIED, (in a coroner's inquisition). 8 Dowl. 157, 160.

INSTAR DENTIUM.—Like teeth. See INDENTURE.

INSTAURUM.—A stock of cattle.

INSTIGATION.—The act of inciting another to do something, as to injure a

third person, to commit a crime, to commence a suit, or to prosecute a criminal.

INSTIRPARE.—To plant or establish.

INSTITOR.—In the civil law, a consignee or factor; one who superintends the business of a store or shop.

INSTITORIAL POWER.—The charge given to a clerk to manage a shop or store.

INSTITUTE.—(1) A commentary, a treatise. (2) In Scotland, a person to whom an estate is first given by destination or limitation. (3) To commence a legal proceeding.

INSTITUTED, (when prosecution is). 1 Binn. (Pa.) 608.

INSTITUTES OF JUSTINIAN.—See INSTITUTIONES.

INSTITUTES OF LORD COKE.—Four volumes by Lord Coke, published A. D. 1628. The first is an extensive comment upon a treatise on tenures, compiled by Littleton, a judge of the Common Pleas, temp. Edward IV. This comment is a rich mine of valuable common law learning, collected and heaped together from the ancient reports and year-books, but greatly defective in method. It is usually cited by the name of "Co. Litt.," or, as "1 Inst." The second volume is a comment upon old acts of parliament, without systematic order; the third a more methodical treatise of the pleas of the crown; and the fourth an account of the several species of courts. These are cited as "2," "3," or "4 Inst.," without any author's name. 1 Bl. Com. 73.

INSTITUTIO HÆREDIS.—In the Roman law, the appointment of the *hæres* in the will. It corresponds very nearly to the nomination of an executor in English law. Without such an appointment the will was void at law, but the *prætor* (*i. e.* equity) would, under certain circumstances, carry out the intentions of the testator.—*Brown*.

INSTITUTION.—This word is used in four senses: (1) Laws, rites, and ceremonies enjoined by authority, as permanent rules of conduct or of government; (2) putting a clerk into possession of a spiritual benefice, previous to which the

oaths against simony and of allegiance and supremacy are to be taken. It is a conveyance or commitment of the cure of souls, by the bishop to the incumbent, whereby the benefice becomes filled (*see* COLLATION; INDUCTION; PRESENTATION); (3) a society for promoting any public object, as a charitable or benevolent institution; (4) in the civil law, the appointment of a debtor as heir, *i. e.* to carry on the legal existence, the *persona* of the testator

INSTITUTION, (in tax act). 24 Ind. 391.
—— (in a statute). 29 Ohio St. 201.

INSTITUTIONES.—It was the object of Justinian to comprise in his Code and Digest, or Pandects, a complete body of law. But these works were not adapted to the purposes of elementary instruction, and the writings of the ancient jurists were no longer allowed to have any authority, except so far as they had been incorporated in the Digest. (*Sm. Dict. Antiq.*) It was, therefore, necessary to prepare an elementary treatise, and the Institutes were published a month before the Pandects, A. D. 533, and designed as an elementary introduction to legal study (*legum cunabula*.) The work was divided into four books, subdivided into titles. The Institutes are the elements of the Roman law, and were composed, at the command of the Emperor Justinian, by Trebonian, Dorotheus, and Theophilus, who took them from the writings of the ancient lawyers, and chiefly from those of Gaius, especially from his Institutes and his books called *Aureorum*, (*i. e.* of important matters.)—*Wharton*.

INSTITUTIONS OF PURELY PUBLIC CHARITY, (in a statute). 36 Ohio St. 259.

INSTRUCT.—(1) To convey information as a client to an attorney, or as an attorney to a counsel; to authorize one to appear as advocate; (2) to give a case in charge to the jury.

INSTRUCT APPRENTICE, (in an indenture). 1 Wheel. Am. C. L. 409.

INSTRUCTION.—In French law, the means used and formality employed to prepare a case for trial.—*Bowrier*.

INSTRUCTIONS.—Directions given by a principal to his agent; a client to his attorney; or a judge to the jury. *See* CHARGE, § 11; INSTRUCT.

INSTRUMENT.—A formal legal writing, *e. g.* a record, charter, deed, or written agreement.

INSTRUMENT, (what is). 2 W. Bl. 822.
—— (when implies a sealing). 2 Saund. 47 a.

INSTRUMENT, (in a statute). 2 Car. & P. 235, 236.

INSTRUMENT FOR THE PAYMENT OF MONEY, (in a statute). 1 Miles (Pa.) 342.

INSTRUMENT FOR THE PAYMENT OF MONEY ONLY, (in the code). 10 N. Y. Leg. Obs. 363; 1 Duer 601.

INSTRUMENT IN WRITING, (defined). L. R. 14 Eq. 402.

— (in a statute). 18 Mo. 445.

INSTRUMENT OF APPEAL.—The document by which an appeal is brought in an English matrimonial cause from the president of the Probate, Divorce, and Admiralty Division to the full court. It is analogous to a petition. Browne Div. 322.

INSTRUMENT OF GAMING, (in vagrant act). L. R. 6 Q. B. 514.

— (in penal statute). Wilberf. Stat. L. 250.

INSTRUMENT OF SASINE.—In the Scotch law, an instrument by which the delivery of "sasine" (*i. e.* seisin, or the feudal possession of land) is attested. The form of this instrument is given in schedule B to Stat. 8 and 9 Vict. c. 35. It is subscribed by a notary in the presence of witnesses, and is executed in pursuance of a "precept of sasine," whereby the "granter of the deed" desires "any notary public to whom these presents may be presented" to give sasine to the intended grantee or grantees. It must be entered and recorded in the registers of sasines.—*Mozley & W.*

INSTRUMENT OF WRITING FOR THE PAYMENT OF MONEY, (in a statute). 2 Whart. (Pa.) 209.

INSTRUMENTA.—Writings not under seal.

INSUCKEN MULTURES.—A quantity of corn paid by those who are thirled to a mill. See **THIRLAGE**.

INSUFFICIENCY—INSUFFICIENT.—When a person is required to make an answer or affidavit, and makes one which does not in form comply with the requirement, it is said to be insufficient. Affidavits of documents and answers in Chancery, and to interrogatories, are frequently insufficient by reason of their not containing a proper traverse (*q. v.*) Insufficiency differs from incompleteness, for a party may make an affidavit of documents which is in form sufficient and is nevertheless incomplete by the omission of documents which ought to have been included, and *vice versa*. Where an affidavit is insufficient the opposite party may obtain an order requiring the deponent to make a further one.

INSUFFICIENCY, (in answer, demurrer for). 7 How. (N. Y.) Pr. 430.

— (in the code). 13 N. Y. 83, 89.

INSULA.—An island; a house not connected with other houses, but separated by a surrounding space of ground.—*Calv. Ler*

INSUPER.—Debiting or charging a person in an account in the Exchequer.—*Blount.*

INSURABLE INTEREST.—A sufficient interest in a subject of insurance to entitle the person possessing it to obtain insurance. See **INTEREST**, § 7.

INSURABLE INTEREST, (what constitutes). 1 Pet. (U. S.) 159, 163; 3 Day (Conn.) 108, 113; 31 Iowa 464; 7 Am. Rep. 160; 6 Mass. 216; 12 Id. 115; 16 Wend. (N. Y.) 385; 17 Id. 359; 9 Serg. & R. (Pa.) 103; 8 T. R. 20; 17 Ves. 253. — (who has). 62 N. Y. 54; 20 Am. Dec. 511 n.

— (in a vessel). 6 Cow. (N. Y.) 318; 1 Hall (N. Y.) 325.

— (necessary to be set out in declaration on insurance policy). 1 Hall (N. Y.) 102.

INSURANCE.—

§ 1. An agreement between two persons (the insurer and the insured) that in consideration of a comparatively small payment (called the "premium") by the insured, the insurer will, on a certain event happening during a given time, pay to the insured either an agreed sum or the amount of the loss caused to the insured by the event. (See **INTEREST**, § 7.) The amount of the premium is calculated with reference to the risk incurred by the insurer. (See **RISK**.) The instrument by which the contract is entered into is called a "policy" (*q. v.*) Insurance is a contract *uberrimæ fidei* (*q. v.*)

Contracts of insurance are of two kinds, viz., those which are, and those which are not, in the nature of contracts of indemnity. (*Godsall v. Boldero*, 9 East 72; 2 Sm. Lead. Cas. 260; *Dalby v. India, &c., Ass. Co.*, 15 Com. B. 365, and reporter's note; 2 Sm. Lead. Cas. 271.) To the first class belong fire and marine (or maritime) insurances.

§ 2. **Fire insurance.**—By a fire insurance the insurer, in consideration of a certain premium, paid either in gross (*i. e.* once for all) or at stated intervals, undertakes to indemnify the insured against damage to his property by fire during a limited portion of time. (Sm. Merc. L. 411.) Fire insurances are sometimes di-

vided into "common," "hazardous," "double hazardous," and insurances of "extraordinary risk," according to the nature of the property insured and the purposes for which it is used. *Ellis Ins.* 11.

§ 3. **Marine insurance** is a contract of indemnity against certain perils or sea risks to which the ship, freight or cargo, and the interests connected therewith, may be exposed during a particular voyage, or a fixed period of time. (*Maude & P. Mer. Sh.* 330; *Sm. Merc. L.* 336.) It is not a perfect indemnity, but only approximate. (*See Aitchison v. Lohre*, 4 App. Cas. 755.) The insurer in marine insurances is usually either an underwriter (*q. v.*) or an insurance company. As to the varieties of marine insurances, *see* **POLICY**.

§ 4. **Nature of indemnity.**—Insurances of this class being contracts of indemnity, the insured is only entitled to be paid once, and if he obtains payment of his loss from any other source, he is not entitled to claim against his insurer. Moreover, the insurer, upon paying the loss, is entitled to be put in the place of the insured; therefore if the insured had a claim which he might have enforced in respect of the property (*e. g.* against a person whose negligence or wrongful act caused the loss), the insurer will thenceforth be entitled to enforce that claim for his own benefit; or if, after the insurer paid the insured's claim, the latter receives compensation from other sources, the insurer is entitled to recover from the insured any sum which he may have received in excess of his actual loss. *North British Co. v. London, L. & G. Co.*, 5 Ch. D. 569; *Darrell v. Tibbetts*, 5 Q. B. D. 560. *See* **SUBROGATION**.

§ 5. **Double insurance—Over-insurance.**—Double insurance takes place when the same interest and the same risk are insured twice; a second insurance being often necessary where the precise value of the interest is not at first known. But if it appears, when the value of the interest becomes known, that there has been an over-insurance, that is to say, that the sum of the two or more insurances exceeds the interest of the insured, the excess cannot be recovered. (*Maud & P. Mer. Sh.* 346.) And if the same person insures the same property with two in-

surers, and it turns out that there has been an over-insurance, then the insurers are entitled to make one another contribute ratably, so that they may all bear the loss in proportion to the amounts for which they have respectively insured the property, instead of the loss being thrown on one.

§ 6. **Other kinds of insurance.**—In addition to fire and marine insurances there are several varieties of insurance belonging to the same class, whose names explain themselves, such as plate-glass and cattle insurance (*see* **CATTLE INSURANCE SOCIETIES**) and insurance against damage by hail.

To the second class belong life and accident insurances.

§ 7. **Life Insurance.**—Insurance upon a life is a contract by which the insurer, in consideration of a certain premium, either in a gross sum or by periodical payments, undertakes to pay to the person for whose benefit the insurance is made, a certain sum of money or annuity on the death of the person whose life is insured; the latter is sometimes called the *cestui que vie*, or "the life." If the insurance be for the whole life, the insurer undertakes to make the payment whenever the death happens; if otherwise, he undertakes to make it in case death should happen within a certain period, for which period the insurance is said to be made. The utility of this contract is obvious. A creditor is enabled thereby to secure his debt; an annuitant, the continuance of his income after the grantor's decease; a father a provision for his family, available in case of his own death. (*Sm. Merc. L.* 403.) Policies may also form the subject of settlements and mortgages.

§ 8. **An accident insurance** is a contract to pay a fixed sum on death resulting from accident, either generally, or limited to accidents of a particular kind, *e. g.* railway accidents. Some policies also provide for payment of a fixed weekly sum during incapacity caused by an accidental injury. *See* **RE-INSURANCE**; **RISK**; **SALVAGE**; **SUING AND LABORING**; **UBERRIMÆ FIDEI**; **WARRANTY**.

INSURANCE, (defined). 105 *Mass.* 160; 2 *Johns. (N. Y.) Cas.* 149.

INSURANCE, (against fire, covers what). 10 Pet. (U. S.) 512.

INSURANCE AGAINST FIRE, (in a lease). 3 Campb. 134, 136.

INSURANCE AGENT.—An agent employed to effect insurance, either on behalf of the insurer or the insured. Agents of insurance companies are called "general agents," when clothed with the general oversight of the companies' business in a State or large section of country, and "local agents," when their functions are limited and confined to some particular locality.

INSURANCE BROKER.—See **BROKER**, § 2.

INSURANCE COMPANY.—An association or incorporated company (stock or mutual) making it their business to enter into contracts of insurance. Mutual companies are those in which the persons insured form the company, *i. e.* each member contributes or engages to pay, whenever losses shall require, a sum, to a general fund, and losses sustained by any member are paid out of this fund. Stock companies are those in which the members contribute a capital which is liable for losses of the insured, and the insured pay premiums which form the basis of dividends. Some companies combine both methods.

INSURANCE, DOUBLE, (defined). 12 Mass. 218.

— (what constitutes). 16 Wend. (N. Y.) 396; 5 Serg. & R. (Pa.) 473.

INSURANCE POLICY.—See **POLICY OF ASSURANCE**.

INSURANCE POLICY, (not divisible). 11 Johns. (N. Y.) 233.

INSURED.—The person who obtains insurance on his property, or upon whose life an insurance is effected.

INSURED, (covenant to keep, in lease). 4 Campb. 73.

— (in insurance policy). 12 Cush. (Mass.) 541.

INSURE PREMISES, (in a covenant). 5 Barn. & Ald. 1, 5.

INSURER.—The underwriter, or insurance company with whom a contract of insurance is made.

INSURER, (not liable for owner's fraud). 1 Hill (N. Y.) 29.

INSURGENT.—One who is concerned in an insurrection; one who rises in armed resistance to the existing government.

INSURRECTION.—A rebellion, or rising of citizens or subjects in resistance to their government.

INTAKERS.—Receivers of stolen goods.—*Spel. Gloss.*

IN-TAKES.—Temporary inclosures made by customary tenants of a manor under a special custom authorizing them to inclose part of the waste until one or more crops have been raised on it. *Elt. Com.* 277

INTEGER.—Whole; untouched.

INTEGRAL PARTS, (of a corporation). 7 Cow. (N. Y.) 526; 3 Watts (Pa.) 48; 3 East 213, 214; 3 T. R. 199.

INTEMPERANCE, (distinguished from "drunkenness"). 76 Ill. 211.

INTENDED FOR PUBLIC USES, (in a patent for lands). 1 Whart. (Pa.) 480.

INTENDED TO BE FORTHWITH RECORDED, (in a deed). 4 Wheel. Am. C. L. 9.

INTENDED TO BE RECORDED, (in a deed). 2 Rawle (Pa.) 18.

INTENDED ROAD, (in a lease). 5 Taunt. 548, 549.

INTENDENT.—A person who has the charge, direction, and management of some office or department.

INTENDMENT.—"Intendment of the law," in the old books, signifies a presumption; and "common intendment" signifies a rule of law, or *præsumptio juris et de jure*. *Co. Litt.* 78b. See **PRESUMPTION**.

INTENT.—Intention (*q. v.*)

INTENT, (a material part of a crime). 2 Mass. 131.

— (distinguished from "motive"). 7 Blatchf. (U. S.) 277.

— (synonymous with "purpose"). 9 East 495.

— (in a statute). 40 Md. 414.

INTENT AND PURPOSE, (in a will). 2 Dyer 163a.

INTENT TO DEFAUD, (conveyance of land with, void). 4 Wheat. (U. S.) 466.

— (may be presumed). 18 Wend. (N. Y.) 375.

INTENT TO SELL, (in act respecting slaves). Penn. (N. J.) 413.

INTENTIO.—A count.—*Bract.* An intention.

Intentio cæca mala (2 Buls. 179): A hidden intention is bad.

Intentio inservire debet legibus; non leges intentioni (Co. Litt. 314): Intention ought to be subservient to the laws; not the laws to the intention.

Intentio mea imponit nomen operi meo (Hob. 123): My intent gives a name to my act.

INTENTION.—

§ 1. **Civil.**—In civil or private law, the general rule is that a person is responsible for the consequences of his acts, whether he intended them or not. Hence if A. in defending himself against B. unintentionally strikes C., he is liable to an action of battery by C. (See **BATTERY**.) In such actions, however, the question of intention is generally taken into consideration by the jury in assessing the damages. (See **DAMAGES**, § 4.) As to actions of libel, see **APOLOGY**.

§ 2. **Criminal.**—In criminal law, intention is an essential part of every crime or offence. See **DELUSIONS**; **DURESS**; **FRAUD**; **INSANITY**; **LUNACY**; **MALICE**; **NEGLIGENCE**; **OVERT ACT**; **REMOTE**; **UNDUE INFLUENCE**.

INTENTION, (defined). 6 Biss. (U. S.) 238.

—— (in an indictment). 2 Jones (N. C.) L. 414.

—— (in a will). 4 Kent Com. 534.

—— (of testator, from what ascertained). 1 McCord (S. C.) Ch. 71.

INTENTIONAL, (not synonymous with "premeditated design"). 12 Minn. 539; 13 *Id.* 134.

INTENTIONAL ACT, (synonymous with "wilful act"). 1 Ashm. (Pa.) 299.

INTENTIONE.—A writ that lay against him who entered into lands after the death of a tenant in dower, or for life, &c., and held out to him in reversion or remainder.—*F. N. B.* 203.

INTER.—Amongst; between.

INTER ALIA.—Amongst other things.

INTER ALIOS.—Between other parties. See **RES INTER ALIOS ACTA**.

INTER APICES JURIS.—Amongst the subtleties of the law. See **APEX JURIS**.

INTER CÆTEROS.—Among others; in a general clause. A civil law term for clauses of disinheritance in a will. Inst. 2, 13, 1.

INTER CANEM ET LUPUM.—Between the dog and the wolf; twilight; called also mock shadow, daylight's gate, and betwixt hawk and buzzard.—*Cowell*.

INTER CONJUGES.—Between husband and wife.

INTER PARTES.—Between parties. An indenture is always formally described as made *inter partes*; i. e. as made between such an one, of the one part, and such another, of the other part. 1 Steph. Com. 449.

INTER PARTES, (instrument, defined). 7 Halst. (N. J.) 53; 10 Wend. (N. Y.) 91, 93; 1 Chit. Pl. 4.

INTER QUATUOR PARIETES.—Between four walls.

INTER RUSTICOS.—Among the illiterate, or unlearned.

INTER SE, or **SESE**.—Between or among themselves.

INTER VIRUM ET UXOREM.—Between husband and wife.

INTER VIVOS.—Between living persons. Ordinary gifts (*donationes*) are so called to distinguish them from such as are made in contemplation of death (*mortis causâ*). See **DONATIO**; **GIFT**.

INTERCEDERE.—In the civil law, to become bound for another's debt.

INTERCOMMONING.—When the commons of two adjacent manors join, and the inhabitants of both have immemorially fed their cattle promiscuously on each other's common, this is called "intercommoning."—*Termes de la Ley*. See **COMMON**, § 8.

INTERCOURSE, COMMERCIAL, (in what consists). 1 Wheat. (U. S.) 266.

INTERDICT—INTERDICTION.—An ecclesiastical censure prohibiting the administration of divine ceremonies, either to particular persons or in particular places, or both. This severe censure has been long disused. Also, in Scotch law, an injunction.—*Wharton*.

INTERDICTA.—In the Roman law, the injunctions of English law. They were of three varieties: (1) *Prohibitoria*, which forbade the doing of certain acts; (2) *restitutoria*, which required the restitution of property, and (3) *exhibitoria*, which required the production of some specific individual person or thing. In relation to the possession of property, they were either for the acquiring of the possession in the first instance (*adipiscendæ possessionis causâ*), or for the recovering of a possession which had been lost (*recuperandæ possessionis causâ*), or for the protection or retention of an existing and continuing possession (*retinendæ possessionis causâ*), there being two principal interdicts for such last-mentioned protection of the possession, viz., the *uti possidetis* for immovables, and the *utrubi* for movables.—*Brown*.

INTERDICTION.—In the French law, a person over twenty-one years of age, if he is in an habitual state of imbecility or insanity, may be excluded the management of his goods, upon

the application of any of the relatives, whom failing, upon the application of the attorney-general (*procureur du roi*), to the court of first instance, who will thereupon direct an inquiry before the *conseil de famille*. The interdiction may be either absolute or limited; in the case of a limited interdiction, the party is able to act with the approval of a *conseil judiciaire*.—*Brown*.

INTERDICTION OF FIRE AND WATER.—Banishment by an order that no man should supply the person banished with fire or water, the two necessities of life.

INTERESSE TERMINI.—Interest of a term. The interest which a lessee under a lease at common law has before he enters or takes possession of the land demised. (Litt. § 459; Co. Litt. 270 a.) But a term limited to commence immediately by a bargain and sale or other conveyance operating under the Statute of Uses, passes an estate without the necessity of entry. (Wms. Real Prop. 396.) An *interesse termini* is merely the right to an estate, and therefore can neither prevent nor be the subject of merger. See *Hyde v. Warden*, 3 Ex. D. 72; Co. Litt. 338 a.

INTERESSE TERMINI, (defined). 72 Mo. 542.

INTEREST.—Interest, in Latin, = (1) "It concerns;" (2) "it concerns beneficially;" "is of advantage." (Dig. ii. 11 fr. 14; x. 4 fr. 19.) Hence, its primary meaning of "right." The word acquired its second meaning (*infra*, § 13.) thus: In Roman law, when a person brought an action against his debtor for non-payment of a sum of money he claimed, in addition to the debt, *id quod interest creditoris solutum esse*, i. e. the benefit which he lost by the non-payment (Dig. xix. 1 fr. 1), and this was computed by calculating what profit he could have made by lending the money with a stipulation for the payment of a periodical sum for the use of it (*usura, fœnus*). Thus, the damages for the wrongful detention of money (*interest, interesse*) became equivalent to the agreed payment for a loan (*usura, fœnus*). The word "interest" seems to have been introduced into England as a substitute for "usury" (*q. v.*) when that word had acquired its dyslogistic meaning.

§ 1. **In property.**—In the most general sense of the word, a person is said to have an interest in a thing when he has rights, advantages, duties, liabilities, losses, or the like, connected with it, whether present or future, ascertained or potential; provided, that the connection, and in the case of potential rights and duties, the possibility, is not too remote. The question of remoteness depends upon the purpose which the interest is to serve.

§ 2. **Declarations against.**—Interest also signifies, *par excellence*, an advantageous or beneficial interest. Thus, declarations by deceased persons against their own interest are receivable in evidence in

proceedings between third persons, by exception to the general rule against hearsay evidence. Best Ev. 635. See **DECLARATION**, § 5.

Interests may be considered from the following aspects:

§ 3. **Property.**—Interest, as applied to property, is used in a wide sense to include estates (legal and equitable), charges, easements, profits *à prendre*, licenses, equities of redemption, and generally every right in respect of property which entitles, or may in future entitle, the holder to make use of it in some way, as opposed to bare powers, uses, authorities, possibilities, expectations, rights of presentation, and the like. (Co. Litt. 265 b; 5 Co. 19 a; Vin. Abr. Interest; Rolle Abr. Graunt.) Hence, "interest" is used in conveyances, &c., to denote every beneficial right in the property conveyed. Interest "extendeth to estates, rights and titles, that a man hath of, in, to, or out of lands; for he is truly said to have an interest in them; and by the grant of *totum interesse suum* [all his interest] in such lands, as well reversions as possessions in fee-simple, shall passe." Co. Litt. 345 b.

§ 4. In a narrower sense, interest is used as opposed to estate, and therefore denotes rights in property not being estates, *e. g.* an *interesse termini* (*q. v.*) (Co. Litt. 345 b); the *quasi*-reversion of a lord which entitles him to the land on an escheat or forfeiture (Watk. Desc. 2); the interest which the lord of a manor has in copyhold land, between a surrender by the old tenant and the admittance of the new (*Minton v. Kirwood*, L. R. 1 Eq. 455); the interest of executors under a devise of land for the payment of debts (Co. Litt. 42 a); interests resembling estates but not recognized as such by the common law, *e. g.* executory interests in land (see **EXECUTORY INTEREST**) and interests in personalty; these interests in personalty so closely resemble estates that they are frequently called estates; and the terms "absolute," "limited," "vested," "contingent," "sole," "joint," &c., are applied to interests in the same senses in which they are applied to estates. See **ESTATE**; **TENANT**.

§ 5. Interest is used by real property

lawyers in several technical senses: thus, at one time it may denote certain rights intimately connected with the soil of land, such as commons and other profits *à prendre*, licenses for profits certain, &c., as opposed to "matters of easement and discharge," such as a right of way or a mere authority to enter upon land, (*Potter v. North*, Vent. 383; *Godley v. Firth*, Yelv. 159; *Weekly v. Wildman*, 1 Ld. Raym. 407; *Web v. Paternoster*, Palm. 71;) while in another sense interest is used to denote an exclusive right to land, namely, that arising from ownership, as opposed to rights *in alieno solo*, such as commons. *Burt. Comp.* § 1158 *et seq.*

§ 6. Interest is also opposed to possession, as when we say that an estate is vested in interest, meaning that the right has accrued, but that the possession is deferred; thus a vested remainder is an estate vested in interest. *See ESTATE*, § 10.

§ 7. **Insurable interest.**—In the law of insurance, a person is considered to be interested in property or in the life of a person, when the destruction or injury of the property, or the death of the person, would expose him to pecuniary loss, (*Halford v. Kymer*, 10 Barn. & C. 725; *Reed v. Royal Exchange Ass. Co.*, Peake Add. Cas. 70; 2 Sm. Lead. Cas. 290;) this is an "insurable interest." Thus, a creditor has an insurable interest in the life of his debtor, because if the debtor died his money might be lost; and a shipowner has an insurable interest in the goods on board his ship to the extent of his freight, because if the goods were lost the freight would not be paid; *à fortiori* of course the owner of the goods has an insurable interest in them. *Maud & P. Mer. Sh.* 332 *et seq.*, 348 *et seq.*

§ 8. **Short interest.**—When a person insures for an amount exceeding the value of his interest (as where part only of an insured cargo is put on board) the excess is called "short interest," and part of the premium proportionate to the excess is returnable by the underwriter. *Id.* 430; *Sm. Merc. Law* 398. *See RISK.*

§ 9. **Suit.**—It is a rule of equity that a person cannot maintain a suit or action unless he has an "interest" in the subject of it, that is to say, unless he stands in a sufficiently close relation to it as to give

him a right which requires protection or has been infringed, and for the protection or infringement of which he brings the action; and "want of interest" is a ground of demurrer. (*Mitf. Pl.* 154.) Thus, if a testator bequeaths property in trust for his daughters and their issue, and on their death without issue, in trust for his next of kin, during the daughters' lives the next of kin have only an expectation and not an interest, and cannot maintain an action for the administration of the estate. *Clowes v. Hilliard*, 4 Ch. D. 413.

§ 10. **Probate.**—So, in the law of probate and administration, a person has an interest for the purpose of obtaining a grant of probate when he is the executor of the deceased, and for the purpose of obtaining a grant of letters of administration when he is a relation, legatee, or creditor of the deceased. For the purpose of opposing a grant of probate or administration any person has an interest whose rights will or may be affected by the proposed grant. (*Browne Prob. Pr.* 153 *et seq.*, 265 *et seq.*, 277.) When a person has such an interest as to entitle him to a grant in priority to another person, the former is said to have a superior, the latter an inferior, interest. *Coote Prob. Pr.* 192, 199.

§ 11. **Interest suit.**—An interest action (or cause) in English law, is one in which the legal interest of a person in the estate of the deceased is disputed; thus, where a person applying for a grant of probate or administration is stopped by a caveat, he issues a writ of summons against the caveator to have the question whether he is entitled to the grant determined. *Browne Prob. Pr.* 287; *Rules of Court*, i. 1; *Forms, App. A. Part. ii.* § v. 4, *App. C.* 17.

§ 12. **In persons, or office.**—One person may have an interest in another independently of the question of property. Thus, a husband has an interest in his wife (*see CONSORTIUM*), a guardian in his ward, a master in his servant, and so on. (*See RIGHT.*) The interest which a guardian in socage has in his ward has been called an interest of honor, as opposed to an interest of profit. (*Shaftsbury v. Shaftsbury*, Gilb. Eq. 172.) Similarly the interest which an executor has in the property vested in him is sometimes called an interest of office. *Wms. Ex.* 244. *See ESTATE; ESTOPPEL; POSSESSION; POSSIBILITY; RIGHT.*

§ 13. **On money.**—Interest also signifies

a sum payable in respect of the use of another sum of money, called the "principal." Interest is calculated at a rate proportionate to the amount of the principal and to the time during which the non-payment continues; this rate is generally expressed as so much for every hundred dollars ("per centum") during a year ("per annum"). "To them that lend money my caveat is, that neither directly nor indirectly, by art or cunning invention, they take above ten in the hundred." (Co. Litt. 3b.) Thus, a contract to pay five per cent. per annum on \$1,500 entitles the lender to \$75 for every year, \$6.25 for every month, and so on while the loan continues. Interest is considered as accruing from day to day (*see* APPORTIONMENT), although it is generally payable periodically.

§ 14. **Agreed interest—Interest as damages.**—Interest is of two kinds, namely, that which is agreed to be paid on a loan, and that payable as damages for the non-payment of a debt or other sum of money on the proper day. (Cf. Dig. xix. 1, fr. 13, § 20.) Formerly the common law only allowed interest by way of damages where the debt was secured by a bill of exchange, or where a promise to pay interest was implied from a usage of trade or the like. But, in England, by Stat. 3 and 4 Will. IV. c. 42, interest is recoverable on all debts payable by virtue of any written instrument. If no time of payment is fixed, the creditor must give the debtor notice before he can become entitled to claim interest. In equity, interest seems to be allowed as damages in all cases where there has been a wrongful detention of money which ought to have been paid. (*See Hyde v. Price*, 1 C. P. Cooper 193, and reporter's note; *Lowndes v. Collens*, 17 Ves. 27; *Webster v. British Empire Ass. Co.*, 15 Ch. D. 169.) A judgment debt bears interest from the date on which the judgment is entered until it is paid. If a person contracted to pay \$100 on the 1st January, 1877, with interest at five per cent. per annum in the meantime, and he failed to repay the \$100 on the day, the same rate of interest would generally be adopted by a court or jury as the measure of damages for the delay in payment. If, however, the agreed rate were excessive and extraordinary, such as five per cent.

per month, it would not be adopted, and only a reasonable rate would be allowed as damages. *Cook v. Fowler*, L. R. 7 H. L. 27; *Gordillo v. Weguelin*, 5 Ch. D. 287; *Howard v. Harris*, 1 Vern. 190. As to interest generally, *see* Chit. Cont. 595 *et seq*; *Leake* 584; *Wms. Pers. Prop.* 139. *See* PENALTY.

§ 15. **Simple, and compound.**—Interest is also either simple or compound. Compound interest is where each periodical amount of interest as it becomes payable is added to the principal, so that the next instalment of interest is calculated not only on the principal but also on the interest already accrued. A covenant to capitalize arrears of interest so as to make it bear interest is lawful. *Clarkson v. Henderson*, 14 Ch. D. 348. *See* ACCOUNT, § 12; ACCUMULATION.

§ 16. **Maritime interest.**—In the case of loans made on the security of bottomry bonds, &c., the lender, in consideration of the risk incurred, has always been allowed to stipulate for an extraordinary rate of interest called "maritime interest," as an exception from the laws against usury; and this still applies in foreign countries. *Wms. & B. Adm.* 48; *Dig.* xxii. 2; 2 *Steph. Com.* 93. *See* BOTTOMRY; RESPONDENTIA · USURY.

INTEREST, (defined). 42 Conn. 528; 13 Mass. 269; 11 Barb. (N. Y.) 473; 5 Cow. (N. Y.) 587; 11 Wend. (N. Y.) 298.

— (rule of calculating, generally). 1 Dall. (U. S.) 124.

— (rule of calculating in cases of partial payments). 1 Halst. (N. J.) 408; 4 Hen. & M. (Va.) 431.

— (as damages). 2 Minn. 350, 384.

— (when allowed, generally). 4 Dall. (U. S.) 289; 13 Mass. 217; 4 Halst. (N. J.) 3, 6; 6 *Id.* 47; Penn. (N. J.) 548; 5 Paige (N. Y.) 543; 15 Wend. (N. Y.) 76; 20 *Id.* 51; 5 Rawle (Pa.) 258; 6 Wheel. Am. C. L. 211.

— (when not allowed, generally). 7 Me. 48; 17 Mass. 357; *Coxe* (N. J.) 176; 13 Wend. (N. Y.) 639; 2 Hen. & M. (Va.) 603; 15 East 224.

— (when allowed on legacy). 1 Sax. (N. J.) 40; 2 Johns. (N. Y.) Ch. 628; 6 Paige (N. Y.) 298; 12 Ves. 461; 15 *Id.* 301.

— (bequest of). 4 Watts (Pa.) 130; 6 *Id.* 14.

— (sale of, what is). 2 Taunt. 38, 46.

— (of a fund, bequest of). 4 Ves. 51; 19 *Id.* 416.

— (what is not usurious). 8 Wheat. (U. S.) 354.

— (when begins to run on arrears of taxes). 5 Cow. (N. Y.) 331.

INTEREST, (in a contract). 112 Mass. 244, 246.
 — (in a deed). 8 How. (U. S.) 10, 29; 10 Pick. (Mass.) 376.
 — (in a statute). L. R. 4 H. L. 450.
 — (in railways clauses act). L. R. 2 H. L. 175.
 — (in statute against usury). 3 N. Y. 344, 355.
 — (in a will). 7 Johns. (N. Y.) Ch. 258; 2 Atk. 38; 1 Chit. Gen. Pr. 354.
INTEREST, ALL MY, (in a devise). 2 Doug. 763.
INTEREST, ANY WHATSOEVER, (in a statute). 2 Barn. & Ad. 341, 345.
INTEREST, BENEFICIAL, (in a will). Amb. 388.
INTEREST, COMPOUND, (not allowed). 1 Johns. (N. Y.) Ch. 17.
 — (not usurious). 5 Paige (N. Y.) 98.
INTEREST, CONVENTIONAL, (what is). 2 Cal. 568.
INTEREST, EQUITABLE, (what is). 5 Pick. (Mass.) 281.
 — (as distinguished from "legal interest"). 5 T. R. 711.
 — (is insurable). 12 Wend. (N. Y.) 507.
 — (judgment is not a lien upon). 1 Johns. (N. Y.) Ch. 56; 2 *Id.* 312.
INTEREST IN LAND, (what is). 9 Johns. (N. Y.) 298.
 — (what is not). 4 Wheat. (U. S.) 513.
 — (included in the term "real estate"). 9 Cow. (N. Y.) 81.
 — (devise of). 6 Binn. (Pa.) 97; 5 T. R. 292; 8 *Id.* 502.
 — (when may be sold under execution). 18 Johns. (N. Y.) 94; 1 Wend. (N. Y.) 502.
 — (when may not be sold under execution). 3 Paige (N. Y.) 219.
 — (in statute of frauds). 1 Cai. (N. Y.) 46; 1 Cow. (N. Y.) 568; 2 Johns. (N. Y.) 421 *n.*; 1 *Id.* 81; 7 *Id.* 205; 9 *Id.* 358; 10 *Id.* 109; 1 Johns. (N. Y.) Ch. 131; 6 Wend. (N. Y.) 461; 15 *Id.* 380; 4 Rawle (Pa.) 435; 14 Serg. & R. (Pa.) 193; 6 East 603, 611; 11 *Id.* 362.
INTEREST IN PROPERTY, (in mechanics' lien act). 120 Mass. 346.
INTEREST IN REAL ESTATE, (in statute of frauds). 50 Barb. (N. Y.) 302.
INTEREST IN THEM, (in statute of frauds). Esp. 101.
INTEREST, LAWFUL, (in a promissory note). Ry. & M. 381.
INTEREST OF STOCK, (what is passed by). 1 Madd. 253, 258.

INTEREST OR NO INTEREST.

—A policy of insurance "interest or no interest," is a wager policy and void. See **WAGER POLICY**.

INTEREST OR NO INTEREST, (in a policy of insurance). 1 Bouv. Inst. 479.

Interest reipublicæ ne maleficia remaneant impunita (Jenk. Cent. 31; Wing. 140): It is the concern of the State that evil deeds do not go unpunished.

Interest reipublicæ quod homines conserventur (Jenk. Cent. 30): It is the concern of the State that men be preserved.

Interest reipublicæ res judicatas non rescindi: It is the concern of the State that things adjudicated be not rescinded.

Interest reipublicæ suprema hominum testamenta rata haberi (Co. Liu. 236 b): It is the concern of the State that last wills should be given effect to.

Interest reipublicæ ut carceres sint in tuto: It is the concern of the State that prisons be in security.

Interest reipublicæ ut pax in regno conservetur, et quæcunque paci adversentur provide declinentur: It is the concern of the State that peace be preserved in the kingdom, and that whatever things are adverse to peace be prudently declined.

Interest reipublicæ ut quilibet re sua bene utatur: It is the concern of the State that every one uses his property properly.

Interest reipublicæ ut sit finis litium (Co. Litt. 303): It is the concern of the State that there be an end of lawsuits.

INTEREST REIPUBLICÆ UT SIT FINIS LITII, (applied). 57 Ala. 313.

INTEREST SUIT.—See **INTEREST**, § 11.

INTEREST UPON INTEREST.—Compound interest (*q. v.*)

INTEREST, VESTED, (in land). 2 Halst. (N. J.) 180, 187.

INTERESTED, (in Code of Civil Procedure, § 399). 78 N. Y. 284.

— (in a statute). 25 Wend. (N. Y.) 160.

INTERESTED WITNESS, (who is). South. (N. J.) 15.

— (when objection of incompetency should be made). 14 Wend. (N. Y.) 593, 619.

INTERFERENCE.—This word is used in patent law in a technical sense, under the provision of Revised Statutes, § 4904, prescribing proceedings whenever an application is made for a patent which, in the opinion of the commissioner, would interfere with any pending application, or with any unexpired patent. It is held that two patents interfere only when they claim, wholly or partially, the same invention. That is what constitutes an interference. (Gold, &c., Separating Co. v. United States Disintegrating Ore Co., 6 Blatchf. (U. S.) 307; 3 Fish. (U. S.) Pat. Cas. 489.)—*Abbott*.

INTERIM ORDER.—One made in the meantime, and until something is done.

INTERLINEATION.—Writing between the lines. The insertion of any matter in a written instrument after it is engrossed or executed. A deed may be avoided by interlineation, unless a memorandum be made thereof at the time of the execution or attestation. If there be any interlineation or erasure in the *jurat* of an affidavit, that affidavit cannot, in general, be read.

INTERLINEATION, (when avoids instrument). 5 Halst. (N. J.) 288; 22 Wend. (N. Y.) 388.

INTERLOCUTORY.—A proceeding in an action is said to be interlocutory when it is incidental to the principal object of the action, namely, the judgment. Thus, interlocutory applications in an action include all steps taken for the purpose of assisting either party in the prosecution of his case, whether before or after final judgment; or of protecting or otherwise dealing with the subject-matter of the action before the rights of the parties are finally determined; or of executing the judgment when obtained. Such are applications for time to take a step (*e. g.* to deliver a pleading), for discovery, for an *interim* injunction, for the appointment of a receiver, for obtaining a garnishee order, &c. So, an order giving a plaintiff leave to sign judgment is interlocutory, because he must sign judgment before he can issue execution. (Sm. Ac. 83; Standard Discount Co. v. La Grange, 3 C. P. D. 67; Smith v. Cowell, 6 Q. B. D. 75.) The question whether an order or judgment is interlocutory is of importance with reference to the right of appeal and the time during which it may be appealed against.

INTERLOCUTORY, (defined). 13 Abb. (N. Y.) Pr. 307.

INTERLOCUTORY COSTS.—Costs of motions, and other proceedings in the intermediate stages of the action, as distinguished from final costs.

INTERLOCUTORY COSTS, (what are not). 22 How. (N. Y.) Pr. 60.

INTERLOCUTORY DECREE.—*See* DECREE, § 1.

INTERLOCUTORY DECREE, (defined). 8 Wend. (N. Y.) 219, 224.

—(what is). 6 How. (U. S.) 201; 2 Munf. (Va.) 42, 523.

—(distinguished from "final decree"). 14 Wend. (N. Y.) 539; 3 Bl. Com. 452.

INTERLOCUTORY JUDGMENT.

—*See* JUDGMENT, § 5.

INTERLOCUTORY JUDGMENT, (what is). 76 N. Y. 516.

INTERLOCUTORY ORDER.—An order made during the progress of the suit upon some incidental matter arising out of the proceedings. "An order which decides not the cause, but only settles some intervening matter relating to it; as when an order is made on a motion in Chancery, for the plaintiff to have an injunction to quiet his possession till the hearing of the cause; this or any such order, not being final, is interlocutory."—*Termes de la Ley*.

INTERLOCUTORY ORDER, (what is not). 1 Del. Ch. 13, 19.

INTERLOCUTORY SENTENCE.

In the civil law, a sentence upon some indirect question arising from the principal cause. *See* DEFINITIVE SENTENCE.

INTERLOPER.—A person who intercepts the trade of others, without lawful authority so to do.

INTERMEDDLING, (defined). 41 Barb. (N. Y.) 337.

INTERMEDIATE TOLL, (in a statute). 29 Ohio St. 552.

INTERNAL COMMERCE, (in United States constitution). 3 Cow. (N. Y.) 748.

INTERNAL IMPROVEMENTS, (what are). 4 Otto (U. S.) 310.

INTERNATIONAL COPYRIGHT

—*See* COPYRIGHT, § 5.

INTERNATIONAL LAW is of two kinds, public and private.

§ 1. **Public international law** is the body of rules which control the conduct of independent States in their relations with each other. It is, therefore, altogether different in its nature from law in the narrower sense of the word, namely, law capable of judicial enforcement, for that implies a force superior to both the litigants or disputants; and as independent States have no recognized common superior, the rules by which their conduct is governed are incapable of enforcement

except by war. Man. Int. Law 5; Aust. Jur. 89.

§ 2. **Natural and positive.**—With reference to its sources, public international law is sometimes divided into natural and positive, the natural consisting of those rules which are (or are supposed to be) derived from the law of nature, and the positive consisting of rules based on usage or custom (customary international law), and on agreement (conventional international law). Man. Int. Law 66–89. See BLOCKADE; CONFISCATION; CONTRABAND; EMBARGO; MUNICIPAL; POSTLIMINIUM; PRE-EMPTION; PRIVATEERS; PRIZE COURTS; REPRISALS; RETORSION; SEARCH; TERRITORIAL.

§ 3. **Private** international law is that branch of municipal law which determines before the courts of what nation a particular action or suit should be brought, and by the law of what nation it should be determined; in other words, it regulates private rights as dependent on a diversity of municipal laws and jurisdictions applicable to the persons, facts, or things in dispute, and the subject of it is hence sometimes called “The conflict of laws.” (Westl. Pr. Int. Law 1 *et seq.*; 5 Sav. Syst. 3, *passim*; Story Conf. L.) Thus, questions whether a given person owes allegiance to a particular State where he is domiciled, whether his status, property, rights and duties are governed by the *lex sitûs*, the *lex loci*, the *lex fori*, or the *lex domicilii*, are questions with which private international law has to deal.

INTERNUNCIO, or **INTERNUNCIUS**.—A messenger between two parties; also, the pope's representative in other countries.

INTERPELLATION.—A citation or summons.

INTERPLEADER.—

§ 1. When a person is in possession of property in which he claims no interest, but to which two or more other persons lay claim, and he, not knowing to whom he may safely give it up, is sued by one or both, he can compel them to interplead, i. e. to take proceedings between themselves to determine who is entitled to it. Thus, where a seller of goods attempts to stop them *in transitu*, and the buyer or his

assignees contend that he has no right to do so, the wharfinger in whose hands the goods are is liable to an action by each for their delivery. Before the English Interpleader Act (1 Will. IV. c. 58), which has been substantially adopted or re-enacted in many of the States, he must either have defended both actions, or filed a bill in equity (called a “bill of interpleader”) to compel them to interplead (Snell Eq. 478), but under that act as soon as either of them commences an action against him he may apply to the court, or a judge, and if there is really a question between the claimants, an order will be made directing it to be tried either by substituting the second claimant as defendant to the action in lieu of the stakeholder, or by a feigned issue, or by a special case. In some cases the question may be disposed of summarily.

§ 2. **Sheriffs.**—The English Interpleader Act also contains provisions for the relief of sheriffs against conflicting claims to goods taken in execution. (Sm. Ac. (12 edit.) 167; Broom Com. L. 238; Day C. L. P. Acts 353; Chit. Gen. Pr. 1391; Coe Pr. 152.) As to the County Court practice of interpleader for the relief of the high bailiff, see Poll. C. C. Pr. 206 *et seq.* See COLLUSION, § 2.

INTERPLEADER, BILL OF, (defined). 1 Cow. (N. Y.) 703.

—— (what is). 2 Paige (N. Y.) 199.

—— (object of). 2 Paige (N. Y.) 209.

INTERPOLATE.—To insert words in a complete document.

INTERPOLATION.—The act of interpolating; the words interpolated.

Interpretare et concordare leges legibus est optimus interpretandi modus (8 Co. 169): To interpret and to reconcile the laws to laws is the best mode of interpretation.

Interpretatio fienda est ut res magis valeat quam pereat (Jenk. Cent. 198): Such an interpretation is to be adopted, that the thing may rather stand than fall.

Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum (4 Inst. 328): In doubtful matters, such an interpretation is to be made that inconvenience and absurdity may be avoided.

INTERPRETATION.—

§ 1. **Defined.**—The ascertaining and declaring the true meaning of the words and conduct of men, or, as Lieber puts it, of signs used to convey ideas. (Leg. &

Pol. Hermen.) The word is used interchangeably with "construction" (*q. v.*), but there would seem to be this distinction, that "interpretation" is the ascertainment of what the writer intended, while "construction" includes also the settlement of the legal force and effect of the writing. Parsons, in his work on contracts, says, that interpretation properly precedes construction, but does not go beyond the written text. (Vol. 2 p. 491 *n. (a.)*) The following rules of interpretation are generally recognized.

§ 2. **Wills.**—(1) A testator is always presumed to use words according to their strict and primary acceptation, until from the context of the will it appears that he has used them in a different sense. (2) Where there is nothing in the context of a will showing that the testator has used words in other than their strict and primary acceptation, and his words when so interpreted are sensible with reference to extrinsic circumstances, then the words are to be interpreted in their strict and primary sense and in no other, notwithstanding the strongest presumption to the contrary. (3) But where the testator's words when so interpreted are insensible with reference to extrinsic circumstances, then the extrinsic circumstances may be looked into for the purpose of arriving at some secondary or popular sense which shall be sensible with reference to these circumstances. (4) Where the written characters of the will are difficult to decipher, or the words of the will are in an unknown or unusual language, the evidence of persons experienced in deciphering written characters, or acquainted with the language, is admissible for the purpose of informing the court or judge. (5) Extrinsic evidence is also admissible for the purpose of identifying the *object* of the testator's bounty (whether devisee or legatee), and for the purpose also of identifying the *subject* of disposition. (6) Where the words of a will remain unintelligible after the application of the five preceding rules, the will is void for uncertainty.

§ 3. **Other writings.**—With reference to other instruments. The principal rules regarding the interpretation of these are the following: (1) The agreement shall

have a reasonable construction according to the intent of the parties; (2) the construction shall be liberal and favorable, *ut res magis valeat quam pereat*; (3) the popular meaning of the word is to be adopted until proof of a preciser technical or acquired meaning; (4) every word is to be regarded in the light of its context, *ex antecedentibus et consequentibus optima fit interpretatio*; (5) an erroneous particularization does not affect a precedent generality that is true (*falsa demonstratio non nocet, cum de corpore constat*); and *vice versâ*, a subsequent generality shall be confined by the precedent particularization (this is called the construction *ejusdem generis*); (6) custom shall control a contract, unless the contract exclude the custom; (7) the words of a deed are to be construed most strongly against the grantor (*verba cartarum fortius accipiuntur contra proferentem*); but this rule is only to be relied upon when other rules of construction fail (*Lindus v. Melrose*, 3 H. & N. 177); (8) every contract binds the executor or administrator of the party, although he be not named, but to bind the heir he must be particularly mentioned; (9) parol evidence may, in certain cases, be admitted in connection with written agreements; (10) in interpreting statutes, the *ratio legis* is not to be considered, if the words of the statute in themselves are clear, and these words (being clear) are neither to be extended beyond nor restricted within their simple extent, but if the words are not in themselves clear, then the *ratio legis* may (among other things) be considered, and (11) in interpreting decided cases, the *ratio decidendi* is to be gathered, and when once gathered it is the only permanently valuable part of the decision.

INTERPRETATION CLAUSE.—

A section of a statute which defines the meaning of certain words occurring frequently in the other sections.

INTERPRETERS.—Persons sworn at a trial to interpret the evidence of a foreigner or a deaf and dumb person to the court.

INTERREGNUM.—The time during which a throne is vacant in elective kingdoms; for in such as are hereditary, as in

England, there can be no interregnum, the sovereign, in his artificial capacity, never dying.

INTERROGATORIES. — Written questions to be answered on oath. Sometimes the answers are given verbally and taken down in writing, as when a person is examined by interrogatories before an examiner or commissioner, but more generally the term is used to denote interrogatories delivered by one party to an action for the examination of the opposite party, who is compellable to answer them by affidavit. By this means a plaintiff is enabled in many cases to ascertain whether he has a good cause of action, or obtain admissions in support of his case. (*See ANSWER; DISCOVERY.*) The practice of administering interrogatories is derived from the old practice in Chancery. (*Dan. Ch. Pr.* 404.) Interrogatories are annexed to a commission to take testimony; to a bill for discovery, and are used in proceedings to bring a party into contempt.

Interruptio multiplex non tollit prescriptionem semel obtentam (2 Inst. 654): Frequent interruption does not take away a prescription once secured.

INTERRUPTION.—

§ 1. **Of easement.**—In the law relating to easements, profits *à prendre*, franchises and similar rights, interruption is where the continuity of enjoyment of a right is broken. Interruption of the possession is where the right is not enjoyed or exercised continuously; interruption in the right is where the person having or claiming the right ceases the exercise of it in such a manner as to show that he does not claim to be entitled to exercise it. Thus, if a person who has for some time used a right of way simply ceases to use it, this is an interruption to the possession; if he asks the permission of the owner of the land before continuing to use the right, this is an interruption in the right, even if he then makes use of the way, because he does so not in exercise of his original right, but by virtue of the permission granted to him by the owner. *Gale Easem.* 153, *n.* (m).

§ 2. Interruption in the right may arise either from the act of the person having or claiming the right, or from the act of

the servient owner, or other person, as where an adverse obstruction is erected to prevent the exercise of the right. *Id.* 154; *Shelf. R. P. Stat.* 20, and the cases there cited. *See* further as to interruption, *Co. Litt.* 245 b; *Shelf.* 180.

§ 3. Interruption of the possession has no legal effect except as evidence of an interruption in the right. (*See Gale* 209; *Shelf.* 20; *Co. Litt.* 114 b.) Interruption in the right may prevent the acquisition of a right by prescription, or may cause the acquisition of a qualified right, or may destroy a right which has been acquired. (*Co. Litt.* 113 b, 114 b; *Gale and Shelf.* l. c.) By the English Prescription Act (*q. v.*) no act or other matter shall be deemed to be an interruption so as to prevent the acquisition of a right under the act unless it shall have been submitted to or acquiesced in for one year after notice. (§ 4.) But an interruption for less than a year may prevent the acquisition of the right by showing that the enjoyment was contentious; *Gale* 176, citing *Eaton v. Swansea Waterworks Co.*, 17 Q. B. 267; 15 Jur. 675; 20 L. J. Q. B. 482. *See* DISTURBANCE; ENJOYMENT.

§ 4. In the Scotch law, a term applied to the step requisite by law to stop the running of the period of limitation.—*Bell Dict.*

INTERRUPTION OF ANY PERSON WHATSOEVER, (in a covenant). 3 Com. Dig. 274.

INTERRUPTION, WITHOUT ANY, (in a covenant). 3 East 491.

INTERSECT, (defined). 45 Conn. 344.

INTERVENE—INTERVENER.—

§ 1. An intervener is a person who voluntarily interposes in an action or other proceeding with the leave of the court. Therefore a person who is cited (*q. v.*) is not an intervener, although sometimes so called. *Kennaway v. K.*, 1 P. D. 150.

§ 2. In divorce suits.—In English divorce practice any person can intervene in a suit for nullity or dissolution by showing cause against a decree *nisi* (*see DECREE*, § 3), and at any time during the progress of such a suit and before the decree is made absolute, if the queen's proctor suspects that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, he may by leave of the court intervene in the suit, alleging the collusion, and retain counsel and subpoena witnesses to prove it. 23 and 24 Vict. c. 144, § 7; 36 Vict. c. 31, § 1; Matrimonial Causes Act, 1878, § 2; *Browne Div.* 298. *See, also,* as to intervention on the custody, &c., of infants affected by a divorce suit, 20 and 21 Vict. c. 85, § 35, and 22 and 23 Vict. c. 61, § 4; *Browne Div.* 308. *See* COLLUSION.

§ 3. **Probate, and admiralty.**—In probate actions, and in admiralty actions *in rem*, any person may intervene who can show that he has an interest in the matter in dispute. Coote Prob. Pr.; Browne Prob. Pr. 250.

§ 4. **By appearance.**—The term "intervene" is sometimes applied to those cases where a person may, by leave of the court, make himself a defendant in an action by entering an appearance; as in an action for the recovery of land. See **APPEARANCE**, § 2.

INTERVENING DAMAGES, (defined). 1 Pick. (Mass.) 532.

—— (in a bond). 4 Pick. (Mass.) 465.

—— (in a statute). 1 Tyler (Vt.) 264, 267.

INTERVENTION.—In international law, intervention is such an interference between two or more States as may (according to the event) result in a resort to force; while mediation always is, and is intended to be and to continue, peaceful only. Intervention between a sovereign and his own subjects is not justified by anything in international law; but a remonstrance may be addressed to the sovereign in a proper case.—*Brown*.

As to intervention in suits, see **INTERVENE**.

INTESTABILIS.—A witness incompetent to testify.—*Culp. Lex*.

INTESTABLE.—One who has not testamentary capacity, *e. g.* an infant, lunatic, or person civilly dead.

INTESTACY.—The state or condition of dying without having made a will.

INTESTATE.—In the strict sense of the word, a person is said to die intestate when he leaves no will; but he is also said to die intestate, wholly or partially, if he leaves a will which does not dispose of his property at all, or only disposes of part of it, so that the whole or a part of it devolves on his heir-at-law or next of kin according to the rules governing the devolution of intestates' estates; as to which, see **DESCENT**; **DISTRIBUTION**.

Intestatus decedit, qui aut omnino testamentum non fecit; aut non jure fecit; aut id quod fecerat ruptum irritumve factum est; aut nemo ex eo hæres exstitit: A person dies intestate who either has made no testament at all, or has

made one not legally valid; or if the testament he has made be revoked, or made useless; or if no one becomes heir under it.

INTICING, (a servant to leave his master). 6 Mod. 101.

INTIMATION.—In Scotch and civil law, notice; judicial notice of any proceeding.—*Bell Dict.*

INTIMIDATING, (in crimes act). 1 Kv. L. J. 185.

INTIMIDATION.—Every person commits a misdemeanor, punishable with a fine or imprisonment, who wrongfully uses violence to, or intimidates, any other person, or his wife or children, with a view to compel him to abstain from doing, or to do, any act which he has a legal right to do or abstain from doing. (Stat. 38 and 39 Vict. c. 86, § 7.) This enactment is chiefly directed against outrages by trades-unions (*q. v.*) and there are similar statutes in many of the States.

INTITLE.—See **ENTITLE**.

INTO AND OUT OF, (in a statute). L. R. 1 Ad. & E. 358.

INTO, THROUGH AND UNDER, (in public health act). 5 Ch. D. 328.

INTOL and UTTOL.—Toll or custom paid for things imported or exported.

INTOXICATED, (in a statute). 47 Vt. 294, 296.

INTOXICATING, (distinguished from "spirituous"). 6 Cush. (Mass.) 468.

INTOXICATING BEVERAGES, (in a statute). 3 Mich. 330.

INTOXICATING LIQUORS.—See **LICENSE**; **LIQUOR SELLING**.

INTOXICATING LIQUORS, (what are). 102 Mass. 144; 6 Park. (N. Y.) Cr. 361.

—— (in a statute). 23 Ohio St. 556.

—— (includes "spirituous liquors"). 12 Cush. (Mass.) 272.

—— (not synonymous with "spirituous liquors"). 2 Gray (Mass.) 501; 4 *Id.* 18.

INTRA.—In; near; within. *Infra* (*q. v.*) has taken the place of *intra* in many of the more modern Latin phrases.

INTRA VIRES.—An act is said to be *intra vires* ("within the power") of a person or corporation when it is within the scope of his or its powers or authority. It is the opposite of *ultra vires* (*q. v.*)

INTRARE MARISCUM.—To drain a marsh or low ground, and convert it into herbage or pasture.

INTRINSECUM SERVITIUM.—Common and ordinary duties with the lord's court.—*Kenn. Gloss.*

INTRODUCTION.—The introduction of a deed consists of the words with which it begins. In an indenture the introduction consists of the words "This Indenture," followed by the word "witnesseth" after the date and parties and the recitals (if any). In a deed poll containing recitals, the introduction is "To all to whom these presents shall come, A. B., of, &c., sends greeting:" followed by the recitals; when a deed poll contains no recitals it begins with the words "Know all men by these presents, that I, A. B., of, &c." 1 Dav. Prec. Conv. 33. *See* DEED; PREMISES.

INTRODUCTORY CLAUSE, (in a will, effect of). 17 Wend. (N. Y.) 398.

INTROMISSION.—In the Scotch law, the assuming possession and management of property belonging to another, either on legal grounds or without any authority, which latter is termed *vicious intromission*.

INTRUDER—INTRUSION.—Intrusion, in the law of real property, occurs in the following cases:

§ 1. **On heir.**—Where a person (A.) dies seised of an estate of inheritance expectant upon an estate for life, and then the tenant for life dies, and before A.'s heir enters on the land a stranger enters or "intrudes," A.'s heir has an action to recover possession of the land.

§ 2. **On crown.**—"He that entreth upon any of the king's demesnes and taketh the profits, is said to intrude upon the king's possession." (Co. Litt. 277 a.) Similarly, if a tenant of crown land continues in possession after his estate has determined, he is an intruder on the crown, and not a tenant at sufferance (*q. v.*), "because there is no laches imputed to the king for not entering." Co. Litt. 57 b.

§ 3. **On guardian in chivalry.**—Formerly, when an heir in wardship of chivalry ousted his lord by entering on the land during his minority, or if, after attaining majority, he entered on the land without making satisfaction for his lord's right of marriage (*q. v.*), he was said to intrude into the land. Fitz. N. B. 141.

§ 4. **On benefice.**—In ecclesiastical law, intrusion is where a person without ecclesiastical authority takes possession of a benefice while it is full. Several ancient constitutions are directed against this offence. Phillim. Ecc. L. 507 *et seq.*

INTRUDER, (who is not). 43 Ga. 479.

INURE.—*See* ENURE.

Inutilis labor, et sine fructu, non est effectus legis (Co. Litt. 127): Useless labor and without fruit, is not the effect of law.

INVADIARE.—To pledge or mortgage lands.

INVALID.—Devoid of binding force or legal efficacy. *See* VALID.

INVASION.—(1) An encroachment upon the rights of another; (2) the incursion of an army for conquest or plunder.—*Webster.*

INVASION, (what constitutes). 2 Cranch (U. S.) 234.

INVASIONES.—The inquisition of serjeanties and knight's fees.—*Cowell.*

INVECTA ET ILLATA.—This term, in questions of hypothec and thirlage, applies to the articles brought within the tenement or within the thirl. *See Bell Dict.*

INVENTION, (defined). 2 H. Bl. 471.

—— (what is not). 3 Wheel. Am. C. L. 424.

—— (under copyright law). 4 Wash. (U. S.) 48.

—— (under patent laws). 4 How. (U. S.) 646.

INVENTIONS.—*See* PATENT; SPECIFICATION.

INVENTIONES.—Treasure-trove.—*Cowell.*

INVENTOR.—One who discovers or contrives something new which is patentable. *See* NOVELTY; UTILITY.

INVENTORY.—A list or schedule, containing a true description of goods and chattels, or furniture, &c., made upon a sale, or sheriff's levy, or by an executor or administrator of his testator's or intestate's effects.

INVENTORY, (in execution act). 6 Halst. (N. J.) 224.

—— (in a statute). 3 Atk. 248, 251.

INVERITARE.—To make proof of a thing.—*Jacob.*

INVEST.—(1) To give possession. (2) To lay out money or capital with a view to obtaining an income therefrom.

INVEST, (defined). 37 Ind. 122; 15 Johns. (N. Y.) 358, 384.

INVESTED, (when money is). 31 Conn. 143.

—— (in a statute). 23 N. Y. 242, 244.

INVESTIGATION, (defined). 48 Ill. 285, 290.

INVESTITURE.—

§ 1. In feudal law, the delivery of corporal possession of land granted by a lord to his tenant. It answered to the more modern livery of seisin (*q. v.*) 1 Steph. Com. 505; and see DIGNITY.

§ 2. In ecclesiastical law, investiture is one of the formalities by which the election of a bishop is confirmed by the archbishop. See Phillim. Ecc. L. 42 *et seq.*

INVESTMENT.—Money invested. (*See* INVEST.) The securities in which trustees may invest trust funds are usually enumerated in the settlement or will creating the trust. Independently of such an express power, they have a statutory power of investing in certain kinds of securities specified by statute in the several jurisdictions.

INVESTMENT, (defined). 15 Johns. (N. Y.) 392.

—— (as applied to capital employed in banking). 1 Edw. (N. Y.) 532.

INVITO.—Against, or without the assent or consent; unwilling.

Invito beneficium non datur (D. 50, 17, 69): A benefit is not conferred on one who is unwilling to receive it, that is to say, no one can be compelled to accept a benefit.

INVITO DOMINO.—Without the assent of the lord or owner.

INVOICE.—A written account of the particulars of goods sent or shipped to a purchaser, factor, &c., with the value, or prices, or charges annexed.

INVOICE PRICE, (defined). 7 Johns. (N. Y.) 354.

INVOLUNTARY MANSLAUGHTER.—The unintentional killing of a person by one engaged in an unlawful, but not felonious, act. 4 Steph. Com. (7 edit.) 52. *See* HOMICIDE.

INVOLVE THE MERITS, (when order does not). 2 Minn. 118, 122.

INVOLVED, (when means "affected"). 1 Civ. Pro. (N. Y.) 194.

INVOLVING THE MERITS, (in a statute). 11 So. Car. 122.

INVULTUACIO.—A species of witchcraft, the perpetrators of which were called *vultivi*, and are described by John of Salisbury,

De Nugis Curial. l. 1, c. xii. To this superstition Virgil (*Pharmaceutria*) alludes: *Limus ut hic durescit, et hæc ut cera liquescit, Uno eodemque igni, sic nostro Daphnis amore.* Of the practice of this superstition, both in England and Scotland, many instances are to be met with; among the most remarkable, that of Eleanor Cobham, Duchess of Gloucester, and Stacey, servant to George, Duke of Clarence.—*Anc. Inst. Eng.*

INWARDS AND OUTWARDS, (in a charter party). L. R. 6 Ex. 9.

IOTA.—The minutest quantity possible Iota is the smallest Greek letter.

Ipsæ leges cupiunt ut jure regantur (Co. Litt. 174): The laws themselves require that they should be governed by right.

IPSE DIXIT.—A bare assertion resting on the authority of an individual (*ipse*).

IPSISSIMIS VERBIS.—In the identical words; opposed to substantially.

IPSO FACTO.—By the very act itself. A censure of excommunication in the Ecclesiastical Court, immediately incurred for divers offences, after lawful trial.

IPSO JURE.—By the mere operation of law.

IRE AD LARGUM.—To go at large; to escape; to be set at liberty.

IRREBUTTABLE.—*See* PRESUMPTION.

IRREGULAR—IRREGULARITY.

—When a proceeding (judicial or extrajudicial) is done in the wrong manner, or without the proper formalities, it is said to be irregular or an irregularity, as opposed to a proceeding which is illegal or *ultra vires*. An irregularity may be waived by the consent or acquiescence of the opposite party, or (in the case of judicial proceedings) will generally be allowed by the court to be set right on payment of the costs occasioned by it; while a proceeding which is illegal or *ultra vires* is, as a rule, wholly null and void. Archb. Pr. 1192; Sm. S. & C. L. & T. 220 (irregular distress); Lind. Part. 261.

IRREGULAR DEPOSIT.—*See* DEPOSIT, § 1.

IRREGULAR PROCESS, (defined). 2 Ind. 252. — (distinguished from "erroneous process"). 1 Cow. (N. Y.) 735.

IRREGULARITY.—*See* IRREGULAR.

IRREGULARITY, (defined). 2 Tex. App. 74; 3 Chit. Gen. Pr. 509.

—— (as distinguished from "nullity"). 40 Wis. 363.

—— (as used in entry of judgment of reversal). Penn. (N. J.) 264.

—— (in tax act). 13 Serg. & R. (Pa.) 380, 381.

IRRELEVANCY, (in an answer). 18 N. Y. 321.

—— (included in "impertinence"). 5 How. (N. Y.) Pr. 53.

IRRELEVANT.—In the law of evidence, not relevant; not relating or applicable to the matter in issue; not supporting the issue.

IRRELEVANT ANSWER, (what is not). 6 How. (N. Y.) Pr. 312.

IRRELEVANT MATTER, (defined). 3 Sandf. (N. Y.) 744.

IRREMOVABILITY.—The status of a pauper in England, who cannot be legally removed from the parish or union in which he is receiving relief, notwithstanding that he has not acquired a settlement there. Thus, a pauper who has resided in a parish during the whole of the preceding year is irremovable. Stat. 28 and 29 Vict. c. 79, § 8; 3 Steph. Com. 60. See POOR LAW; REMOVAL; RESIDENCE; SETTLEMENT.

IRREPARABLE INJURY.—This phrase does not mean such an injury as is beyond the possibility of repair, or beyond possible compensation in damages, or necessarily great damage, but includes an injury, whether great or small, which ought not to be submitted to on the one hand, or inflicted on the other; and which, because it is so large or so small, or is of such constant and frequent occurrence, cannot receive reasonable redress in a court of law. (Wahle v. Reinbach, 76 Ill. 322.) Wrongs of a repeated and continuing character, or which occasion damages that are estimated only by conjecture, and not by any accurate standard, are included. Johnson v. Kier, 3 Pittsb. (Pa.) 204.

IRREPARABLE INJURY, (what is). 11 Am. Dec. 500 n.

—— (what is not). 3 Mart. (La.) N. S. 25.

IRREPLEVIABLE—IRREPLEVIBLE.—See REPLEVIN.

IRRESISTIBLE FORCE.—Such an interposition of human agency, as is, from its nature and power, absolutely uncontrollable; such as the inroad of a hostile army, robbery by force, &c. Story Bailm.

§§ 25, 26. See ACT OF GOD; CASUS FORTUITOUS; INEVITABLE ACCIDENT; VIS MAJOR.

IRRESISTIBLE SUPER-HUMAN CAUSE, (synonymous with "act of God"). 1 Dak. T. 404, 423.

IRREVOCABLE.—Incapable of being revoked; powers of appointment are sometimes executed so as to be irrevocable (see POWER); no will is ever irrevocable.

IRREVOCABLE, (what powers are). 2 Mas. (U. S.) 244, 247.

—— (as to power of attorney). 2 Mas. (U. S.) 342; 8 Wheat. (U. S.) 201; 9 Wend. (N. Y.) 120.

—— (in a bond). 2 Tyler (Vt.) 323, 343.

IRRIGATION.—The operation of watering lands for agricultural purposes by artificial means.

IRRITANCY.—The becoming void; forfeiture.

IRRITANT CLAUSE.—In the Scotch law, a provision by which certain prohibited acts specified in a deed are, if committed, declared to be null and void. A *resolutive* clause dissolves and puts an end to the right of a proprietor on his committing the acts so declared void.

IRROTULATIO.—In old English law an enrolling; a record. Bract. 292.

Is RECEIVED, (in statute respecting witnesses). 18 Minn. 527.

ISLAND, (in a grant). 6 Cranch (U. S.) 237; 13 Wend. (N. Y.) 355.

—— (in a stream, title to). 5 Wend. (N. Y.) 423, 443.

ISSINT.—Thus; so.

ISSUABLE in pleading signifies: (1) That which is put in issue by the pleadings, *e. g.* "a matter of fact issuable." (Co. Litt. 125a.) This sense is now rare; (2) a pleading is said to be issuable when it raises a substantial question of fact or law, a judgment or verdict on which would determine the action on its merits. (See Sm. Ac. (11 edit.) 101.) A mere dilatory plea, or a plea not going to the merits of the action, as a plea in abatement, or of "alien enemy," was considered a non-issuable plea under the old practice at common law. Chit. Gen. Pr. 247. See ISSUE.

ISSUABLE PLEA.—See ISSUABLE.

ISSUABLE PLEA, (what is). 2 Gr. (N. J.) 346; 10 Wend. (N. Y.) 540; 4 Hen. & M (Va.) 277; 1 Dowl. & Ry. 359.

ISSUABLE PLEA, (what is not). 7 Wheel. Am. C. L. 392.

— (in code). 44 Ga. 433.

ISSUABLE TERMS.—Hilary and Trinity were so called in England because in them issues were made up for the assizes. But for town causes, all the four terms were issuable. The division of the legal year into terms is now abolished, so far as relates to the administration of justice. Judicature Act, 1873, § 26.

ISSUABLY, (defined). 3 Chit. Gen. Pr. 705.

ISSUABLY, PLEADING, (in a judge's order). 6 Com. Dig. 133; 8 T. R. 71.

ISSUE.—**NORMAN-FRENCH**: *issu, issue*; **LATIN**: *exitus*, from *exire*, to go forth. As used in pleading, the phrase "occurs at the very commencement of the Year-Books, viz., 1 Edw. II. . . In some instances the expression *issur d'empler* occurs, which may be translated to get out of, or finish the pleading, and clearly marks the meaning and derivation of the word issue. In the reign of Edw. IV. we find the Latin term thus regularly defined: "*Exitus idem est quod finis, sive determinatio placiti*." Year-Book, 21 Edw. IV. 35." 5 Steph. Pl. App. n. (10).

§ 1. **Of person**.—The issue of a person consists of his children, grandchildren and all other lineal descendants. The word is, however, sometimes used by testators in the sense of "children." 2 Jarm. Wills 101; Ralph v. Carrick, 11 Ch. D. 873. See **HEIR**.

§ 2. **Issues of land**.—"Issues" is the technical name for the profits of land taken in execution under a writ of *distingas*. Finch Law 352 *et seq.*; 3 Bl. Com. 280. See **RENT**.

§ 3. **Issues in an action**.—When the parties to an action have answered one another's pleadings in such a manner that they have arrived at some material point or matter affirmed on one side and denied on the other, and the party whose turn it is to plead adds nothing to his previous pleadings, the parties are said to be "at issue;" the last pleading is called a "joinder in issue" (*q. v.*), and the question thus raised is called the issue, or one of the issues, in the action. (Co. Litt. 126a.) Frequently issue is joined on one question in the case, and the pleadings continue as to the other questions; where the defendant sets up a counter-claim, issue is generally joined on the original claim before it is joined on the counter-claim.

§ 4. **Preparation of issues**.—If the pleadings do not succeed in sufficiently defining the issues in dispute between the parties, the judge may direct the parties to prepare issues, *i. e.* to agree upon a

written statement containing the questions between them, and, if they differ, the issues are settled by the judge. For a specimen of issues settled by the judge, see *West v. White*, 4 Ch. D. 636. As to issues in divorce cases, see *Browne Div.* 231.

§ 5. The next step is the trial (*q. v.*) See **ACTION**.

§ 6. **Common law practice**.—Under the common law practice issues are either of fact or of law, the latter being where there is a joinder in demurrer. Under the new English practice, and that in use in some of the code States, no joinder in demurrer is required, and the term "issue in law" is now seldom used. See **QUESTIONS OF LAW**.

§ 7. As to the "general issue," see that title.

§ 8. Under the old English common law practice, when issue in fact had been joined, all the proceedings in the action from the writ to the award of a jury were set out in a document called "the issue," which was delivered by the plaintiff to the defendant, generally indorsed with notice of trial. (Sm. Ac. (11 edit.) 129; Chit. Gen. Pr. 306. As to pleading the "general issue by statute," see **NOT GUILTY**.) This seems to be the only kind of "general issue by statute" which can now be pleaded in England.

§ 9. **Chancery practice**.—In equity, joining issue is the mode of bringing on a suit for hearing on replication (Hunt. Eq. 63), as opposed to motion for decree (*q. v.*)

§ 10. **Criminal practice**.—In criminal procedure a prisoner is said to plead the general issue when he pleads "Not guilty" to the indictment. This is done when he intends either to deny or justify the charge in the indictment. (4 Steph. Com. 405; Archb. Cr. Pl. 144.) The general issue, therefore, includes defences in the nature of confession and avoidance (*q. v.*) See **PLEA**.

§ 11. **Issue of writs, &c.**—A writ, *subpoena*, or similar document, is said to be issued when it is delivered by the proper officer of the court to the party at whose instance it is sued out, after having been sealed or otherwise marked to denote its official character. See **PRÆCIPUE**.

ISSUE, (defined). 2 Brock. (U. S.) 122; 30 Conn. 488; 12 B. Mon. (Ky.) 655; 4 Mon. (Ky.) 205; Steph. Pl. 25.

— (as a word of purchase). 2 Beas. (N. J.) 168; 9 Mod. 236; 2 Str. 803.

ISSUE, (may be a word of purchase or limitation). 2 Str. 731; Love. Wills 155.

— (as a word of limitation). 1 Yeates (Pa.) 332, 340; 3 Atk. 397; 1 P. Wms. 397.

— (as meaning "children"). 121 Mass. 303, 306; 2 Whart. (Pa.) 451; 2 Beav. 551; 9 Eng. L. & Eq. 193, 194; 7 L. J. N. s. Ch. 273; 1 Madd. 388; 9 Sim. 372; 13 *Id.* 52; 3 T. R. 484; 7 Ves. 522; 10 *Id.* 195.

— (distinguished from "children"). 103 Mass. 289; 1 Hen. & M. (Va.) 289; 10 Jur. 578, 580; 10 Mod. 376.

— (as meaning "heirs"). 47 Md. 439; 1 U. S. L. J. 612.

— (as distinguished from "heirs"). 3 Wend. (N. Y.) 521.

— (as meaning "heirs of the body"). 3 Halst. (N. J.) 39; 63 Pa. St. 481; 8 Mod. 257; 10 *Id.* 376; 4 T. R. 88.

— (when includes "grandchildren"). 1 Ves. 150; 2 *Id.* 348; 3 *Id.* 421.

— (when does not include "grandchildren"). 17 How. (U. S.) 417.

— (as including "all descendants"). 2 C. E. Gr. (N. J.) 475; 3 Ves. 257; 13 *Id.* 340; 8 Com. Dig. 428, 473.

— (in a deed). 3 Wall. Jr. (U. S.) 32; 2 Atk. 582.

— (in a marriage settlement). L. R. 5 H. L. 688; 3 T. R. 372.

— (in a statute). 7 Ind. 44; 4 Halst. (N. J.) Ch. 548; Penn. (N. J.) 7.

— (in a will). 1 Dall. (U. S.) 48; 19 Md. 197; 46 *Id.* 402; 3 Gray (Mass.) 188; 8 C. E. Gr. (N. J.) 541, 545; Penn. (N. J.) 972; 3 Barb. (N. Y.) 243; 1 Edw. (N. Y.) 41, 43; 3 *Id.* 1, 6; 20 Hun (N. Y.) 70; 4 Paige (N. Y.) 345; 13 Wend. (N. Y.) 447; 18 *Id.* 268; 4 Jones (N. C.) L. 425; 3 Binn. (Pa.) 160, 161; 70 Pa. St. 72; 79 *Id.* 333, 335; 11 Phil. (Pa.) 623; 1 Serg. & R. (Pa.) 155; 14 *Id.* 40; 3 Whart. (Pa.) 215; 2 Yeates (Pa.) 585; 3 Desaus. (S. C.) 165; 2 Wash. (Va.) 31; 4 Wheel. Am. C. L. 371; 1 Am. L. J. 193; 8 Bing. 386; Cas. t. Talb. 3-10; 6 Hare 239; 8 L. J. N. s. Ch. 60; 9 Ch. D. 131; L. R. 2 C. P. 511; L. R. 1 H. L. 175; 1 Ld. Raym. 203, 205; 1 P. Wms. 144; 1 Saund. 185 n.; 3 T. R. 86; 4 *Id.* 294; 5 *Id.* 299; 2 Vern. 545; 3 Ves. 383; 1 Hov. Sup. Ves. 274, 275; 3 Ves. & B. 67; 2 Wils. 6, 7; 8 Com. Dig. 473; Reeve Dom. Rel. 469.

— (in pleading, defined). 5 Pet. (U. S.) 141; 7 Humph. (Tenn.) 532.

— (in pleading, what is not). 5 Pick. (Mass.) 206.

— (in practice act). 109 Mass. 211.

ISSUE, DYING WITHOUT, (in a devise). 3 Wash. (U. S.) 369.

ISSUE, GENERAL, (in assumpsit). 2 Hill (N. Y.) 478.

ISSUE, IN DEFAULT OF SUCH, (in a will). 1 Meriv. 675.

ISSUE, LEAVING, (in a will). L. R. 7 Eq. 472.

ISSUE, LIVING, (in a will). 2 Atk. 12, 13.

ISSUE MALE, (as meaning "heirs male"). 5 T. R. 305; 4 Ves. 794.

ISSUE MALE AND FEMALE, (in a devise). 1 Beav. 100.

ISSUE MALE OF HIS BODY, (in a will). 2 Wils. 322, 323.

ISSUE OF A DECEASED CHILD, (in a will). 8 Com. Dig. 473.

ISSUE OF FACT, (distinguished from "question of fact"). 70 N. C. 35, 167.

— (in State constitution). 70 N. C. 27.

ISSUE OF HIS BODY, (in a devise). Gilb. Ev. 24.

ISSUE OF HIS CHILDREN, (in a devise). Com. 457.

ISSUE OF MY BODY, (in a will). L. R. 7 Ex. 339.

ISSUE OF MY DAUGHTER, (in a will). 4 Jur. 691, 693.

ISSUE OF SHARES, (in companies act). 8 Ch. D. 635, 638.

ISSUE OF SUCH OF THEM AS SHALL THEN HAPPEN TO BE DEAD, (in a will). 1 Dru. & W. 127.

ISSUE OF THE BODY, (as meaning "heirs of the body"). 8 C. E. Gr. (N. J.) 553; 1 Str. 29, 31.

ISSUE OF THE MARRIAGE, (defined). 3 Atk. 374.

ISSUE ROLL.—In ancient times it was the practice of the English courts, when the pleadings were carried on orally, to have a contemporaneous record of the proceedings made out upon a parchment roll called the "Issue Roll." This practice, although long grown into disuse, was until recently still supposed in contemplation of law to exist; and the courts still required that it should be made up, or at all events commenced, or an *incipitur* (*q. v.*) entered upon the roll, and certain fees were paid to the officers for making it up. Practically, however, this roll was of no use, and, in consequence, it was abolished; and the only entry of the proceedings upon record came to be that upon the *Nisi Prius* Record, or upon the Judgment Roll, according to the nature of the case. (1 Pl. R. H. T. 4 Will. IV.) And at the present day, there appears to be no issue roll at all in use, unless it should be in the House of Lords. See ENTRY ON THE ROLL.

ISSUED, (as to process). 8 How. (N. Y.) Pr. 500.

— (of bank notes). 17 Barb. (N. Y.) 309, 341.

— (when does not mean "levied"). Wilberf. Stat. L. 131.

— (when writ is). 9 Wend. (N. Y.) 209.

ISSUES AND PROFITS, (in a will). 5 Mod. 63.

ISSUES AND PROFITS OF LAND, (in a will). 1 Cro. 190.

ISSUING, (distinguished from "paying out"). 8 Mich. 104.

— (in a statute). Chit. Bills 209.

ISSUING OF NOTES, (in a statute). 2 Hall (N. Y.) 519.

ISSUING OF A WRIT, (in a statute, synonymous with granting it). 19 Wend. (N. Y.) 49.

IT APPEARS PRESUMPTIVELY, (in code of procedure). 61 How. (N. Y.) Pr. 371.

IT SHALL AND MAY BE LAWFUL, (not necessarily imperative). 1 Edw. (N. Y.) 84.

IT SHALL BE LAWFUL, (in a statute). 5 App. Cas. 214; 4 Q. B. D. 245.

ITA.—So; thus. The initial word of several Latin phrases, such as the following:

ITA EST.—Among the civilians, after the death of a notary, the officer who is authorized to make official copies of his notarial acts from his register, instead of adding to the copy so made the notary's signature, which is required during his life, adds thereto the words *ita est*.

ITA LEX SCRIPTA EST.—So the law is written. The law must be obeyed, notwithstanding the hardship which may result from its operation.

ITA QUOD.—So that; so as. Words formerly used in Latin deeds to introduce a condition.

ITA QUOD, (in a bond). 5 Cow. (N. Y.) 199.

— (in a deed). 8 Pick. (Mass.) 291.

— (in a submission to arbitration). 1 Wheel. Am. C. L. 434.

Ita semper fiat relatio ut valeat dispositio (6 Co. 76): Let the interpretation be always such that the disposition may prevail.

ITA TE DEUS ADJUVET.—So help you God. The old Latin form of administering an oath.

Ita utere tuo ut alienum non lædas: Use your own property and your own rights in such a way that you will not hurt your neighbor, or prevent him from enjoying his. Frequently written *Sic utere tuo, &c.*, (*q. v.*)

ITEM.—Also; likewise; again. A word used to introduce a new paragraph, especially in

old wills; also to denote a particular in an account.

ITEM, (use of, in a will). 1 Har. & M. (Md.) 437; 60 Pa. St. 261, 282; 4 Rawle (Pa.) 68, 69; 1 Whart. (Pa.) 264; 1 Atk. 438; 3 *Id.* 259; 4 Barn. & C. 667, 669; 1 Salk. 239.

— (synonymous with "also" and "further"). 2 Dowl. & Ry. 398, 401.

— (synonymous with "in addition to"). 2 Dowl. & Ry. 403.

— (synonymous with "moreover"). Cam. 166.

ITER.—A foot-way; a right of passage; a journey.

ITERATIO.—Repetition. In the Roman law, a bonitary owner might liberate a slave, and the quiritary owner's repetition (*iteratio*) of the process effected a complete manumission.—*Brown*.

ITINERANT.—Traveling or moving about; thus, the English judges who are now called "justices of assize," were formerly called "justices itinerant," from the circumstance of their traveling into several counties to hear causes ready for trial. (3 Bl. Com. 59.) These judges were appointed for the first time by King Henry II., at the parliament of Northampton, in 1187. See EYRE.

ITINERANT, (in tax act). 57 Ala. 61.

IULE.—Christmas.—*Encycl. Lond.*

J.

JACENS.—Lying in abeyance.

JACK.—A kind of defensive coat-armor, worn by horsemen in war; not made of solid iron, but of many plates fastened together. Some tenants were bound by their tenure to find it upon invasion.—*Cowell*.

JACOBUS.—A gold coin worth 24s., so called from James I., who was king when it was struck.—*Encycl. Lond.*

JACTITATION.—A false boasting. The word is commonly used in English ecclesiastical law, with reference (1) to marriage; (2) to the right to a seat in a church; and (3) to tithes.

§ 2. **Jactitation of marriage** is where a person boasts or gives out that he or she is married to some one, whereby a common reputation of their marriage may ensue (3 Bl. Com. 93); in such a case the person aggrieved may present a petition in the Probate, Divorce and Matrimonial Division, praying a decree of perpetual silence against the jactitator. These suits are of rare occurrence. *Browne Dig.* 85.

§ 3. **Jactitation of a right to a seat in a church** appears to be the boasting by a

man that he has a right or title to a pew or sitting in a church to which he has legally no title.

§ 4. **Jactitation of tithes** is the boasting by a man that he is entitled to certain tithes, to which he has legally no title. See *Rog. Ecc. L.* 482.

§ 5. In Louisiana, the word is used as the name of an action for slander of title to land.

JACTIVUS.—Lost by default; tossed away.—*Cowell*.

JACTUS, or **JACTURA MERCIUM.**—A throwing away of goods; a jettison (*q. v.*)

JAIL.—A prison or gaol. A strong place or house for the safe keeping of debtors and offenders awaiting trial. See **GAOL**; **PRISON**.

JAIL DELIVERY.—See **GAOL DELIVERY**.

JAIL LIMITS, or **LIBERTIES.**—A limited district or region around and

about a debtor's prison, in which those debtors who can give bond not to depart or escape therefrom, are allowed to go at large. The terms "prison bounds" and "rules of the prison," are the names used in some jurisdictions.

JAILER.—A keeper or warden of a prison or jail.

JAMBEAUX.—Leg-armor.—*Blount*.

JAMPNUM.—Furze, or grass, or ground where furze grows; as distinguished from arable, pasture, or the like.—*Cowell*; and *Co. Litt.* 5a.

JAMUNLINGUS.—The same as *commendatus* (*q. v.*)

JAQUES.—Small money.—*Staund. P. C.* c. xxx.

JAVELIN-MEN.—Yeomen retained by the sheriff in England, to escort the judge of assize.

JEDBURGH JUSTICE.—Lynch law.

JEJUNIUM.—Fasting.—*Jacob*.

JEMAN.—A yeoman.—*Cowell*.

JEOFAIL.—In the days of oral pleading, when a pleader perceived any slip in the form of his allegation, he acknowledged his error by the expression *j'ay faillé*, and thereupon obtained liberty to amend. The statutes passed to prevent formal objections being taken after a certain stage in the proceedings, were hence called the "Statutes of Amendment and Jeofail." See *AID*, § 2; *ARREST OF JUDGMENT*, § 2.

JEOPARDY.—Danger; hazard; peril. The constitution of the United States declares that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." (*Amend. Art. V.*) For the construction given by the courts to the word "jeopardy" in this provision, see the references given below. See, also, *AUTREFOIS ACQUIT*; *AUTREFOIS CONVICT*.

JEOPARDY, (as used in United States constitution). 1 *Baldw.* (U. S.) 78; 105 *Mass.* 189; 2 *Pick.* (Mass.) 521; 12 *Id.* 496.

— (what constitutes). 2 *McLean* (U. S.) 114; 38 *Cal.* 467; 41 *Id.* 211, 215; 48 *Id.* 324, 331; 5 *Ind.* 290; 13 *Id.* 215; 14 *Id.* 39; 9 *Bush* (Ky.) 333; 1 *Gr.* (N. J.) 361; 26 *Pa. St.* 513.

— (what is not). 5 *Blatchf.* (U. S.) 204; 3 *Pet.* (U. S.) 288; 2 *Ark.* 229; 25 *Id.* 206; 29 *Conn.* 463, 471; 2 *Day* (Conn.) 504; 26 *Ind.* 366; 3 *Bush* (Ky.) 105; 6 *Id.* 563; 2 *Duv.* (Ky.) 93; *Thach.* (Mass.) *Cr. Cas.* 202; 16 *Nev.* 101; 18 *Johns.* (N. Y.) 200; 6 *Serg. & R.* (Pa.) 577, 597; 3 *Sneed* (Tenn.) 687; 75 *Va.* 909.

JEOPARDY, (in act of congress relative to robbing the mail). *Baldw.* (U. S.) 93.

JEOPARDY OF LIFE, (defined). 26 *Ark.* 260 7 *Am. Rep.* 611.

JEOPARDY OF LIMB, (defined). 1 *Wheel* (N. Y.) *Cr. Cas.* 470.

JERGUER, or JERQUER.—An officer of the custom-house, who superintends the waiters.—*Techn. Dict.*

JESSE.—A large brass candlestick, usually hung in the middle of a church or choir.—*Cowell*.

JETSAM, FLOTSAM, and LIGAN.—Jetsam is where goods are cast into the sea and there sink and remain under water; flotsam is where they continue swimming on the surface of the waves; ligan (or lagan) is where they are sunk in the sea, fastened to a cork or buoy, in order to be found again. In each of these cases the goods belong to the sovereign unless the owner appears to claim them.

§ 2. Jetsam, flotsam and ligan do not fall within the original or common law meaning of "wreck," and therefore do not pass by a grant of wreck; but for some purposes "wreck" includes them. 1 *Bl. Com.* 292; 2 *Steph. Com.* 542; *Constable's Case*, 5 *Co.* 106. See *WRECK*.

JETTISON.—The throwing overboard of goods from necessity to lighten the vessel in a storm, or to prevent capture, or for any other sufficient cause. (*Maud & P. Mer. Sh.* 116, 320, 369.) Jettison is the simplest and oldest instance of general average. See *AVERAGE*, § 3; *GENERAL AVERAGE*.

JETTISON, (defined). 7 *Fed. Rep.* 495; 3 *Barn. & Ald.* 398, 402.

JEUX DE BOURSE.—The French term for a kind of speculating in the public funds; stock-jobbing, where no delivery is contemplated, but merely a settlement of differences.

JEWEL, (a watch is not). 43 *N. Y.* 539.

JEWEL OR ORNAMENT, (a watch and chain is not). 33 *Superior* (N. Y.) 271.

JEWELLER, (tools of, exempt from attachment). 2 *Pick.* (Mass.) 80.

JEWELRY, (in a statute). 14 *Pick.* (Mass.) 370.

JEWS.—Practically, the only disabilities to which Jews are now subject in England are, incompetence to fill certain high offices in the State (*e. g.* that of lord chancellor), and inability

to present to an ecclesiastical benefice attached to an office in her majesty's gift. 3 Steph. Com. 710.

JOB WORK, (synonymous with "lump work"). Penn. (N. J.) 1043.

JOBBER.—One who buys and sells goods for others; one who buys or sells on the stock exchange; a dealer in stocks, shares, or securities.

JOBBER, (defined). 4 Sandf. (N. Y.) Ch. 587, 590.

JOCALIA.—Jewels; paraphernalia.—Cowell.

JOCELET.—A little manor or farm.—Cowell.

JOCKEY, (defined). 3 Scott N. S. 584, 590.

JOCUS PARTITUS.—An election between two proposals. Bract. l. 4 tr. 1 c. 32.

JOHN DOE.—The name which was usually given to the fictitious lessee of the plaintiff in the action of ejectment. He was sometimes called "Goodtitle." (See **EJECTMENT**.) So the Romans had their fictitious personages in law proceedings, as *Titius*, *Seius*. Juv. Sat. iv. 13.

JOINDER.—A coupling; joining or uniting of two distinct things.

§ 1. **Joinder of causes of action**.—The general rule now is, that the plaintiff may unite in the same action several causes of action, subject to separate trials being ordered where they cannot conveniently be tried together. But no cause of action can, as a rule, be joined with an action for the recovery of land, except claims for *mesne profits* or arrears of rent, or breach of contract in respect of the same property. Claims in *autre droit* cannot, as a rule, be joined with personal claims.

§ 2. **Joinder of parties**.—All persons may now, generally, be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative; and the same rule applies to the defendants. See **MISJOINDER**; **NON-JOINDER**; **PARTY**.

§ 3. **Joinder of issue** is where one of the parties joins issue upon the previous pleading, or upon certain parts of it; that is to say, where the party whose turn it is to plead denies every material allegation of fact in the previous pleading, or in a specified part of it, without alleging any

new facts in support of his case, and thus puts an end to the pleadings, wholly or to a certain extent. In ordinary cases the reply (*q. v.*) is a simple joinder of issue on the statement of defence or answer. See **ACTION**; **ISSUE**, § 3; **PLEADINGS**.

§ 4. **Joinder of error**.—In proceedings on a writ of error in criminal cases, the joinder of error is a written denial of the errors alleged in the assignment of errors. It answers to a joinder of issue in an action. See **ERROR**.

JOINDER IN DEMURRER.—See **ISSUE**, § 6.

JOINDER IN ERROR.—See **JOINDER**, § 4.

JOINDER OF COUNTIES.—There can be no joinder of counties for the finding of an indictment; though, in appeal of death, where a wound was given in one county, and the party died in another, the jury were to be returned jointly from each county, before the Stat. 2 and 3 Edw. VI. c. 24; but by that statute the law is altered, for now the whole may be tried either on indictment or appeal, in the county wherein the death is.—*Jacob*.

JOINDER OF COUNTS.—See **COUNT**, § 1.

JOINDER OF ISSUE.—See **JOINDER**, § 3.

JOINDER OF PARTIES.—See **JOINDER**, § 2.

JOINT.—Combined; united; shared amongst many; in the same possession.

§ 1. **Property**.—As applied to property (other than choses in action), joint signifies that it belongs to two or more persons in such a way that on the death of one of them without having disposed of his interest *inter vivos*, it passes to the survivors, and so on until they have all died but one, who then takes the whole by survivorship. This quality distinguishes a joint ownership from an ownership in common, and also, in the case of land, from the form of ownership known, in England, as coparcenary (*q. v.*) As to the rules relating to joint ownership and ownership in common, see **JOINT TENANCY**; **TENANCY IN COMMON**.

§ 2. **Joint ownership of choses in action**.—In the case of bonds, covenants, contracts and other choses in action, when

the right of action is vested in two or more persons, so that they must all join in suing upon it, then the bond, covenant, &c., is said to be joint, as opposed to one which is several, namely, where each of the obligees has a separate interest, and may, therefore, sue alone. Whether a bond, covenant or the like, is joint or several, depends much more upon the subject-matter than upon the words employed, for if each of the obligees has a separate interest, the right of action will be several, although expressed to be joint and several. A bond, covenant, or the like, entered into with several obligees, cannot be joint or several, at their election, but must be either one or the other. *Wms. Pers. Prop.* 356.

§ 3. If one obligee releases the obligor, this is sufficient to bar all the obligees; and if one of several joint obligees dies, his interest passes to the survivors. In the case of partners in trade, however, the share of a deceased partner devolves in equity on his personal representatives, and the surviving partners become trustees for them of his share. (*Wms. Pers. Prop.* 354, 357.) The same rule applies where two or more persons advance money and take the security to themselves jointly.

§ 4. A joint ownership of a chose in action cannot be severed at law by either or both of the obligees, but the parties may make a severance which will be binding in equity. *See TENANCY IN COMMON.*

§ 5. **Joint liability on choses in action.**—Two or more persons may be jointly liable to the same debt or demand, and though each is liable for the whole debt, yet they are all considered as together forming one person; they must, therefore, all be sued together, and a voluntary release to one will discharge them all. (*See RELEASE.*) On the other hand, if one of them is compelled to pay the whole debt, he is entitled to contribution from the others to the extent of their shares. (*Batard v. Hawes*, 2 Ell. & B. 287. *See CONTRIBUTION.*) On the death of one, his liability passes to the survivors, except in the case of partners, for on the death of a partner, his estate remains liable in equity for all partnership debts then existing. (*Wms. Pers. Prop.* 360, 364.) Hence, it is sometimes said that though a partner-

ship debt is joint at law, in equity it is joint and several; but the rule is only true to the extent above mentioned. *Kendall v. Hamilton*, 4 App. Cas. 517.

§ 6. **Joint and several.**—A liability may, however, be both joint and several, so that the creditor may sue one or more of the debtors separately, or all of them jointly, at his option. (*Dic. Part.* 230 *et seq.*) And if one of them is compelled to pay the whole debt or more than his proportion, he is entitled to contribution from the others. (*See CONTRIBUTION.*) If one of them dies, his estate remains liable in the same way that he was. (*Wms. Pers. Prop.* 363.) As to the release of such a liability, *see RELEASE.*

§ 7. **In the English law of bankruptcy**, when several persons are partners together, and all become insolvent, the petition and adjudication of bankruptcy against them may be either joint, *i. e.* embracing all the members of the firm, or separate, *i. e.* confined to each member individually. (*Robs. Bankr.* 572.) When all the members of a firm, *quâ* partners, are adjudged bankrupt, the property of the members which vests in the trustee is divided into two parts, namely: The joint estate, or that of the firm, such as the capital, stock in trade, &c.; and the separate estates consisting of the private property of each partner; and distinct accounts are also kept of the joint or partnership debts, and of the separate debts. This is necessary, because it is a rule that joint creditors (*i. e.* creditors against the firm) are entitled to have their debts paid in full out of the joint estate, before the separate creditors (*i. e.* the creditors of each member) can receive anything from the joint estate, while the separate creditors of each partner are entitled to a similar priority of payment out of his separate estate, as against the joint creditors. *Id.* 583, 609; *ex parte Cook*, 2 P. Wms. 500; *Lind. Part.* 1145 *et seq.*; *Read v. Bailey*, 3 App. Cas. 94.

§ 8. A joint and several creditor is one for whose debt the firm is jointly, and all or some or one of its members are or is also separately, liable. (*Robs. Bankr.* 616.) Thus, if A. and B. are trading in partnership under the firm of A. and Company, and a bill of exchange is accepted by A. and Company, and indorsed by A., the holder of the bill would, in the event of A. and B.'s bankruptcy, be a joint and several creditor, and, therefore, entitled to prove against both the joint estate of the firm and the separate estate of A. *Ex parte Honey*, L. R. 7 Ch. 178. *See CONVERSION*, § 8; *PROOF.*

§ 9. **Land Transfer act.**—In the case of land registered under the English Land Transfer Act, 1875, "joint proprietors" mean any two or more persons who are registered as being together entitled to land, whether concurrently (*e. g.* as joint tenants, tenants in common, &c.) or successively (*e. g.* tenant for life and remainderman). § 69.

JOINT, (when a writ is not). 6 Halst. (N. J.) 128.

JOINT ACCOUNT.—The rule that where two or more persons advance money and take the security to themselves jointly, each is, in equity, deemed to be separately entitled to his proportion of the money, so that on his death it passes to his personal representatives and not to his surviving co-lenders, made it usual, in England, in cases where money was advanced by trustees, to insert in the mortgage deed or other instrument of security a declaration that the money belonged to the lenders on a joint account in equity as well as at law, and that the receipt of the survivors or survivor, or his personal representatives, should be a full discharge for any moneys due on the security. By the Conveyancing Act, 1881, § 61, it is now sufficient to say that the money is advanced by the lenders out of money belonging to them on a joint account, without more, while in cases where the security is made to two or more persons jointly and not in shares, it is (it seems) unnecessary to say even that. The section is, however, somewhat involved and consequently obscure.

JOINT ACTION.—An action in which there are two or more plaintiffs, or two or more defendants.

JOINT ADMINISTRATORS, EXECUTORS, or TRUSTEES.—Those who are joined in the administration of an estate, the execution of a will, or the performance of a trust.

JOINT AND EQUAL PROPORTIONS, (in a will). Amb. 656.

JOINT AND SEVERAL, (when agreement is). 7 T. R. 352.

— (when bond is). 2 Day (Conn.) 442; 5 Halst. (N. J.) 119; 12 Serg. & R. (Pa.) 154; 4 Desaus. (S. C.) 148; 6 Rand. (Va.) 39; 2 Wheel. Am. C. L. 326. 1 Cox Ch. 200: Cro. Jac. 322; 1 East 400; 3 Ves. 395.

— (when bond is not). 1 Farn. & C. 682, 687.

— (when promissory note is). 5 Mass. 358; 7 Id. 58.

JOINT AND SEVERAL BOND.—See **JOINT**, §§ 2, 3.

JOINT AND SEVERAL LIABILITY.—See **JOINT**, §§ 5, 6.

JOINT AND SEVERAL LIABILITY, (of executors). 1 Watts (Pa.) 365.

JOINT AND SEVERAL OBLIGATION, (what is). 10 Mass. 445-452; 10 Serg. & R. (Pa.) 33; 4 Watts (Pa.) 50.

JOINT AND SEVERAL OBLIGORS, (how sued). 1 Pet. (U. S.) 46; 3 Pick. (Mass.) 15.

JOINT AND SEVERAL OWNERSHIP.—See **JOINT**, §§ 2-4.

JOINT BOND.—See **JOINT**, §§ 2, 3.

JOINT BOND, (what constitutes). 1 Harr. (N. J.) 453; 2 Watts (Pa.) 414; 2 Wheel. Am. C. L. 379.

— (what is not). 2 Wash. (Va.) 138.

— (effect of). 5 Co. 119.

JOINT COMMITTEE.—A committee composed of members of each house of a legislative body, appointed to confer together. See **CONFERENCE**, § 2.

JOINT CONTRACTORS.—Persons jointly liable on a contract.

JOINT CREDITORS.—Persons having a joint interest in the same debt or demand.

JOINT DEBTORS.—Persons united in a joint liability or indebtedness.

JOINT DEBTORS, (defined). 18 Johns. (N. Y.) 459.

JOINT EXECUTORS.—See **JOINT ADMINISTRATORS**.

JOINT FIAT.—A fiat which was formerly issued against two or more trading partners.

JOINT FINE.—If a whole vill is to be fined, a joint fine may be laid, and it will be good for the necessity of it; but, in other cases, fines for offences are to be severally imposed on each particular offender, and not jointly upon all of them. (1 Rol. 33; 11 Co. 42; Dyer 211.)—*Jacob*.

JOINT HEIR.—A co-heir.

JOINT HOLDERS, (of a bill of exchange). 5 T. B. Mon. (Ky.) 173.

JOINT INDICTMENT.—When several offenders are joined in the same indictment, such an indictment is called a "joint indictment;" as when principals in the first and second degree, and accessories before and after the fact, are all joined in the same indictment. 2 Hale 173.

JOINT LIABILITY.—See **JOINT**, § 5.

JOINT LIVES.—This expression, which is met with more frequently in English books, applies when a right is granted to two or more persons, to be enjoyed while both live. Annuity to two for their joint lives is payable until one dies.—*Abbott*.

JOINT MAKERS, (of a promissory note, liability of). 6 Cranch (U. S.) 253; 2 Cai. (N. Y.) 121.

JOINT NOTE, (what is). 2 Halst. (N. J.) 71.
JOINT OBLIGATION, (what is). 1 Rawle (Pa.) 255; 1 Munf. (Va.) 175.

JOINT OBLIGEE, (of a bond, how far joint tenants). 1 Harr. (N. J.) 16.

JOINT OWNERS, (who are). 4 Dall. (U. S.) 354; 4 T. R. 720.

_____ (equivalent to "partners"). 1 Com. Dig. 317.

JOINT OWNERSHIP.—See **JOINT**, §§ 1-4.

JOINT PROMISSORY NOTE, (what is). 3 Russ. Ch. 424.

JOINT RIGHTS, (in a statute). 62 How. (N. Y.) Pr. 73.

JOINT STOCK COMPANY.—A term which was originally applied to those unincorporated companies or large partnerships with transferable shares formed at the beginning of the last century (joint stock companies under the common law), and as to the legality of which doubts were and are entertained in England. (See the Bubble Act of 1719 (6 Geo. I. c. 18), passed to discourage these associations; Lind. Part. 189 *et seq.*) By various acts of parliament, from 1825 to 1857, the principal of which were those of 1844, 1855, 1856 and 1857, the formation of joint stock companies was legalized and facilitated. (*Id.* 7.) These companies are quite common in the United States, and we are not aware that any doubts are now entertained as to their legality. See the statutes of the several States on this subject. As to the English acts now in force, see **COMPANIES ACTS**; **DISSOLUTION**, § 3.

JOINT STOCK COMPANY, (in a statute). 121 Mass. 524.

JOINT TENANCY.—

§ 1. An estate in joint tenancy, in the strict sense of the phrase, is created where land or any other tenement is conveyed or given to two or more persons to hold in fee, for life, or other estate. Persons may also be joint tenants by wrong, as where two or more disseise another of any lands or tenements to their own use. Litt. §§ 277, 278. See **TITLE**.

§ 2. The term joint tenancy is also applied to personal property (Co. Litt. 182a), *e. g.* stock in the funds, although it is not the subject of tenure; hence it is more correct to say that two persons are jointly entitled to stock, or that they have a joint ownership of it. As to choses in action, see **JOINT**, § 2 *et seq.*

§ 3. When two or more persons are joint tenants of property, they have, with respect to all other persons than themselves, the properties of a single owner. The principal incidents of joint tenancy are as follows:

§ 4. Every joint tenant is seised or possessed of the joint property *per my et per tout*, *i. e.* by every part and by the whole;* by this is meant that the possession of each is indivisible, and that each has an equal right, so that no one can claim the exclusive possession of any particular part of the property, though each is entitled to his proportion of the rents or other income. (Wms. Real Prop. 134.) It also follows that one joint tenant cannot convey his interest to his co-tenants in the same way that one stranger conveys to another, and therefore the proper mode of conveyance from one joint tenant to another is by release, operating as an extinguishment of the interest conveyed. *Id.* 137. See **RELEASE**.

§ 5. Every joint tenancy is created by one and the same title (*i. e.* the same devise or the same conveyance), and at one and the same time; hence, if land is limited to A. for life, and after his death to the heirs of B. and C., and B. dies in A.'s life-time, and afterwards C. dies also in A.'s life-time, here B. and C.'s heirs are not joint tenants, because the remainder in one moiety of the land vested in B.'s heirs while the remainder in the other was still contingent. (Co. Litt. 188a.) But under the Statute of Uses, or by a gift by will, two persons may be joint tenants, although they come to their estates at different times. *Id.* and note (13); Wms. Real Prop. 137; Wms. Pers. Prop. 355.

§ 6. All the joint tenants must be owners in the same interest and in the same

* Litt. § 288. It is not quite clear whether *my* or *mie* comes from the Latin *mica*, a little bit (French *mie*), or from the Latin *medius*, half or

part (French *mi*). The latter seems the more probable. See Littré Dict. s. *vv.*; Diez v. Mezzo.

capacity; and, therefore, if land is given to two persons, to the one for life, and the other for years, they are not joint tenants. (See ESTATE TAIL, § 4.) So, if land is given to the king and to a subject, they are not joint tenants, because the king is seised in his royal or politic capacity *in jure coronæ*, while the subject is seised in his natural capacity. Co. Litt. 188a, 190a.

§ 7. But the most important quality of a joint tenancy is that of survivorship; "as if three joyntenants be in fee-simple, and the one hath issue and dieth, yet they which survive shall have the whole tenements, and the issue shall have nothing. And if the second joyntenant hath issue, and dye, yet the third which surviveth shall have the whole tenements to him and to his heires forever." (Litt. § 280.) But any joint tenant may by disposing of his share during his life-time (though not by will) to a stranger, sever the joint tenancy, so far as that share is concerned, so that it will henceforth be held by the stranger as tenant in common with the remaining tenant or tenants, who will continue to be joint tenants as between themselves. (*Id.* §§ 287, 294.) Joint tenants may also make partition (*q. v.*) *Id.* § 290; Co. Litt. 187a; Wms. Real Prop. 138.

§ 8. An exception to the right of survivorship between joint owners occurs in the case of partners in trade, for in this case the law vests in the executors or administrators of a deceased partner the share of the deceased in all personal chattels in possession (such as merchandise or ships) belonging to the partnership. But this rule does not apply to real estate or choses in action, which by law go by survivorship to the surviving partners. In equity, however, the share of the deceased partner in the real estate and choses in action of the partnership devolves on his executor or administrators, and the surviving partners are therefore trustees of it for his executors or administrators. See, also, JOINT, § 3.

§ 9. The incident of survivorship being inconvenient where persons are beneficially entitled to property, joint tenancy seldom occurs except in the case of trustees; here the incident is useful, for on the decease of one of the trustees the property vests in the survivors by mere opera-

tion of law, without devolving on the representatives of the deceased trustee, and without being affected by any testamentary disposition by him. Wms. Real Prop. 139; Wats. Comp. Eq. 452. See ESTATE, § 11; JOINT.

JOINT TENANCY, (what words in a will create). 8 Com. Dig. 447.

JOINT TITLE, (declaration alleging, how supported). 1 Hill (N. Y.) 121.

JOINT TRESPASS, (damages in action for). 1 Gr. (N. J.) 298.

JOINT TRESPASSERS.—Two or more who unite in committing a trespass.

JOINT TRUSTEES.—See JOINT ADMINISTRATORS.

JOINTLY AND BETWEEN THEM, (in a will). 1 Bro. Ch. 118.

JOINTLY AND SEVERALLY, (in an agreement). 7 T. R. 352.

— (in a bond). 3 Brev. (S. C.) 145.

— (in a deed). 16 Mass. 60.

— (in a lease). 5 T. R. 522.

— (in a promissory note). 22 Pick. (Mass.) 158.

JOINTRESS.—A woman having, or entitled to a jointure (*q. v.*)

JOINTURE.—The derivation of jointure in the sense of joint tenancy is obvious. The word acquired its meaning of a provision for a wife after her husband's death, from the practice of making a provision for a wife by limiting a "jointure" or estate in joint tenancy to her and her husband before marriage, so that the estate would pass to the survivor. Co. Litt. 187b.

§ 1. In the ordinary sense of the word, jointure is a provision made by a husband for the support of his wife after his death. It is either legal or equitable.

§ 2. Legal jointure.—A legal jointure is (or rather was, for it has long been practically obsolete) "a competent livelihood of freehold for the wife of lands or tenements, &c., to take effect presently in possession or profit after the decease of the husband for the life of the wife at the least," (Vernon's Case, 4 Co. 2b; Co. Litt. 36b,) and was given to her either (1) at common law, in which case it did not bar the wife's dower; or (2) by way of use before the Statute of Uses; or (3) under the provisions of the Statute of Uses, in which case, if the jointure was made in compliance with the act, it operated so as to bar the wife's dower, or to put her to her election whether she would take the jointure or the dower, according as the jointure was made before or after the marriage. *Id.*; Wats. Comp. Eq. 580.

§ 3. Equitable jointure.—An equitable jointure generally consists of a rent-charge or annuity payable by the trustees of a marriage settlement to the wife for her life, if she should survive her husband; the rent-charge or annuity being generally secured by powers of distress

and entry, and by the limitation of the settled lands to trustees for a long term of years. (Elph. Conv. 322, 332 *et seq.*) If the settlement is made by a tenant in tail, after attaining twenty-one, and during his father's life-time, the land is disentailed and resettled on the father and son successively for life, with remainder in tail to the son's issue, with power for the son to charge a jointure rent-charge, secured by powers of distress and entry, in favor of any wife whom he may marry, and to limit a term for securing it. By a separate deed the son exercises these powers in favor of the lady whom he is about to marry. *Id.* 420 *et seq.* See RESETTLEMENT.

§ 4. The acceptance of an equitable jointure by a wife always operated as a bar to her dower. (Wms. Real Prop. 226.) Since the English Dower Act, the doctrine of a jointure (legal or equitable) operating as a bar to dower, is of no practical importance. *Id.* 227. See DOWER.

§ 5. Jointure is the old term for joint tenancy. *Litt.* § 280.

JOINTURE, (defined). 3 Metc. (Ky.) 151; 2 Bl. Com. 137.

—— (what is). 4 Co. 3; Dyer 220 a; Co. Litt. 36.

—— (what is not). 3 Miss. 692.

—— (when a bar to dower). 7 Mass. 155; 2 Paige (N. Y.) 511.

—— (in dower law). 19 Mo. 469.

—— (in a statute). 21 Me. 364.

JOKELET.—A little farm such as required a small yoke of oxen to till it.

JONCARIA, or JUNCARIA.—Land where rushes grow. Co. Litt. 5 a.

JORNALE.—As much land as could be plowed in one day.—*Spel. Gloss.*

JOUR.—In old English law, a day. Co. Litt. 134 b. See DAY; DIES.

JOUR EN BANC.—A day in banc. Distinguished from *jour en pays* (a day in the country), otherwise called *jour en nisi prius*.

JOUR IN COURT.—A day in court; a day to appear in court; an appearance day.

JOURNAL.—

§ 1. A diary. A book kept as a record of what is done day by day, or of proceedings in the order of their occurrence.

§ 2. In book-keeping, a book of account used in double entry, the chief object of which is to contain a periodical abstract of the day-book, for more convenient posting into the ledger.

§ 3. In legislative parlance, the daily record of the proceedings of either house kept by the clerk, in which the various motions, votes, resolutions, &c., are entered as they occur.

JOURNALS OF CONGRESS, or PARLIAMENT.—See JOURNAL, § 3.

JOURNEY, (what is not). 3 Heisk. (Tenn.) 511.

JOURNEY-HOPPERS.—Regrators of yarn. Stat. 8 Hen. VI. c. 5.

JOURNEYMAN.—A workman hired by the day or other given time.

JOURNEY'S ACCOUNTS.—The shortest possible time between an abatement of one writ and the issuing of another. Obsolete. 6 Co. 10.

JOURNEY'S ACCOUNTS, (defined). 1 Ld. Raym. 432.

JUDAISMUS.—The religion of the Jews; also usury; also the dwelling places of the Jews.

JUDEX.—In the Roman, civil, and old English law, a judge; though according to some writers, he was, in early times, rather a juror than a judge, finding facts only and reporting to the *prætor*. The principal use of the word, however, is in its more modern sense of "judge."

JUDEX A QUO.—A judge from whom an appeal is taken.

JUDEX AD QUEM.—A judge to whom an appeal is taken.

Judex æquitatem semper spectare debet (Jenk. Cent. 45): A judge ought always to regard equity.

Judex ante oculos æquitatem semper habere debet: A judge ought always to have equity before his eyes.

Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticæ voluntatis; sed juxta leges et jura pronunciet (7 Co. 27 a): A good judge may do nothing from his own judgment, or from a dictate of private will; but let him pronounce according to law and justice.

Judex damnatur cum nocens absolvitur: The judge is condemned, when a guilty person escapes punishment.

JUDEX DELEGATUS.—A delegated judge; a special judge.

Judex est lex loquens (7 Co. 4 a): A judge is the law, speaking.

JUDEX FISCALIS.—A fiscal judge; one having cognizance of matters relating to the *fiscus* (q. v.)

Judex habere debet duos sales; salem sapientiæ, ne sit insipidus; et salem conscientiæ, ne sit diabolus: A judge should have two salts; the salt of wisdom, lest he be insipid; and the salt of conscience, lest he be devilish.

Judex non potest esse testis in propria causa (4 Inst. 272): A judge cannot be a witness in his own cause.

Judex non potest injuriam sibi datam punire (12 Co. 113): A judge cannot punish an injury done to himself.

Judex non reddit plus quam quod petens ipse requirit (2 Inst. 236): A judge restores not more than that which the plaintiff himself requires.

JUDEX ORDINARIUS.—A judge having jurisdiction in his own right, as distinguished from the *judex delegatus* (*q. v.*)

JUDGE.—An officer lawfully appointed or elected, who sits to administer justice, according to law, in a court. Judges are divided into judges of record, not of record, superior and inferior judges, &c., in the same way as the courts of which they are members. See **CHAMBERS**; **COURT**; **JUSTICE**.

§ 2. In England no action will lie against a judge of record for any act done by him in the exercise of his judicial functions; and even inferior justices, and those not of record, cannot be called in question for an error in judgment, so long as they act within the bounds of their jurisdiction. (*Garnett v. Ferrand*, 6 Barn. & C. 611; *Mostyn v. Fabrigas*, 1 Sm. Lead. Cas. 652; *Scott v. Stansfield*, L. R. 3 Ex. 220; *Willis v. MacLachlan*, 1 Ex. D. 376.) If, however, a judge not of record exceeds his jurisdiction, he is liable to an action by the injured party. (See *Crepps v. Durden*, 1 Sm. Lead. Cas. 711.) This distinction between the respective civil liabilities of judges of courts of record and not of record, seems not to obtain in America, the prevailing rule being that any judge is civilly liable for acts exceeding his jurisdiction, if willful or corrupt. See **CORAM NON JUDICE**.

§ 3. As to the removal of judges, see **DUM BENE SE GESSERIT**.

JUDGE, (what acts constitute). 1 Ld. Raym. 454.

—— (who is not). 3 Serg. & R. (Pa.) 29.

—— (synonymous with "justice"). 1 Code (N. Y.) R. 39.

—— (in State constitution). 3 Yeates (Pa.) 314.

—— (in revised statutes). 4 Paige (N. Y.) 548.

JUDGE ADVOCATE.—The public prosecutor of a court martial. He also swears in the members of the court, advises the court, protects the prisoner from answering questions tending to criminate him, and objects to leading questions when propounded to other witnesses.

JUDGE ADVOCATE GENERAL.—The adviser of the government in reference to courts martial and other matters of military law. In England, he is generally a member of the house of commons and of the government for the time being.

JUDGE OF A COURT OF RECORD, (in a statute). 50 Barb. (N. Y.) 562.

JUDGE OF THE COURT, (in a statute). 1 Civ. Pro. (N. Y.) 119, 122.

JUDGE ORDINARY.—By Statute 20 and 21 Vict. c. 85, § 9, the judge of the Court of Probate was made judge of the Court for Divorce and Matrimonial Causes created by that act, under the name of the judge ordinary. He was in effect judge of first instance in all matters within the jurisdiction of the court. By the Judicature Acts, which transferred the jurisdiction of the court to the High Court of Justice, the judge ordinary was made president of the Probate, Divorce, and Admiralty Division of the High Court, and is now so called. See **COURT FOR DIVORCE AND MATRIMONIAL CAUSES**.

JUDGER.—A Cheshire juryman.—*Jacob*.

JUDGE'S CERTIFICATE.—See *ante* p. 186, *n.* (4).

JUDGE'S MINUTES, or NOTES.—When evidence is given *vivâ voce* on the trial of an action, the judge usually takes notes of the evidence, which are used when it becomes a question what the evidence was, *e. g.* on a motion for a new trial, or an appeal. The judge is not bound either to take the notes or to allow them to be used, although in practice he does both.

JUDGE'S ORDER.—An order made by a judge at chambers, or out of court.—See, *also*, **JUDGMENT**, § 9.

JUDGMENT.—**NORMAN-FRENCH:** *jugement*; **LOW LATIN:** *judicamentum*, from Latin, *judicare*.

§ 1. **Defined.**—The decision or sentence of a court on the main question* in a proceeding, or on one of the questions, if there are several. The judgment so pro-

* The obsolete judgment of *respondeat ouster* (*q. v.*) is an exception to this definition; but as it was not really a judgment, but an interlocutory

order, it has not been thought necessary to frame the definition so as to include it.

nounced is entered on the records of the court. (Rules of Court, xli. 1, 1a; xli. A. *See ENTER; RECORD.*) The term "judgment," however, is also used to denote the reasons which the court gives for its decision; so that where the court consists of several judges it may, and often does, happen that each judge gives a separate judgment or statement of his reasons, although there can only be one judgment of the court in the technical sense of the word. These judgments (more properly called "opinions") are reported as precedents in important cases. *See REPORTS.*

In civil actions, judgments (in the technical sense) are of the following kinds:

§ 2. **In rem.**—With regard to their conclusive effect, judgments are of two kinds, *in rem* and *in personam*. (*See IN PERSONAM.*) A judgment *in rem* is an adjudication pronounced upon the status of some particular subject-matter by a tribunal having competent authority for that purpose. Such an adjudication being a solemn declaration, from the proper and accredited quarter, that the status of the thing adjudicated upon is as declared, it concludes all persons from saying that the status of the thing or person adjudicated upon was not such as declared by the adjudication. Thus, a court of admiralty having in certain cases a right to condemn ships and goods, its judgment is conclusive against all the world that the property so condemned was liable to seizure. (2 Sm. Lead. Cas. 785.) So, in England, a declaration of legitimacy, and (it would seem) a judgment of outlawry, are in effect judgments *in rem*. A judgment of divorce pronounced by a foreign court is in certain cases recognized by our courts, and is then a judgment *in rem*. *Id.* 784; *Harvey v. Farnie*, 5 P. D. 153. *See FOREIGN DIVORCE.*

§ 3. **In personam, or inter partes.**—A judgment *in personam* is more accurately called a judgment *inter partes*, for an adjudication upon the status of a particular person (as in the cases mentioned above) is as much a judgment *in rem* as an adjudication on the status of a thing. (2 Sm. Lead. Cas. 784 *et seq.*) Judgments *in personam* are those which bind only those who are parties or privies to them; as in an ordinary action of contract or tort,

where a judgment given against A. cannot be binding on B. unless he or some one under whom he claims was party to it. *Id.* 788.

§ 4. **Final.**—A final judgment is one which puts an end to the action by declaring that the plaintiff has or has not entitled himself to the remedy he sued for, so that nothing remains to be done but to execute the judgment. Thus, if the plaintiff in an action for damages obtains judgment for \$500 damages and costs, the judgment is final.

§ 5. **Interlocutory.**—An interlocutory judgment is one which does not terminate the action, because it is not complete and definite. Thus, if judgment by default is taken against the defendant in an action for damages, it is an interlocutory one, because the amount of the damages has to be assessed, after which the final judgment is entered (*see WRIT OF INQUIRY*); so judgment in an equity action for an account is, in general, interlocutory, because the accounts and inquiries remain to be taken and made. *See FURTHER CONSIDERATION.*

§ 6. **Judgment on the merits.**—A judgment on the merits is where the case has been argued and the court has decided which party is in the right; such a judgment is given on demurrer or after trial (*q. v.*); and *see MOTION FOR JUDGMENT; VERDICT.*

A judgment is not given on the merits when it is founded on some technical rule of procedure; the following are the principal instances:

§ 7. **Judgment by default** is obtained when one party neglects to take a certain step in the action within the proper time.

§ 8. **Judgment of non-suit** is where the plaintiff fails to appear on the trial, or throws up the action (*see NON-SUIT*); like a judgment by default, it may be set aside on such terms as the court thinks fit. *See also DISCONTINUANCE.*

§ 9. **Judge's order.**—In English practice, judgment by judge's order is obtained either by consent, or on failure of the defendant to satisfy the judge that he has a good or *prima facie* defence to an action for a liquidated demand (*Archb. Pr.* 784; *Thompson v. Marshall*, W. N. 1879, 213; *Crump v. Cavendish*, 5 Ex. D. 211.) To obtain this latter kind, commonly called "judgment under Order XIV.," the plaintiff

takes out a summons supported by an affidavit verifying the cause of action, and stating that he believes the defendant has no defence. If the defendant fails to satisfy the judge that he ought to be allowed to defend the action, the judge either orders judgment to be signed, or allows him to defend on paying the money into court or giving security. The writ must be specially indorsed. See WRIT OF SUMMONS.

§ 10. **By confession.**—Judgment by confession is where a defendant gives the plaintiff a *cognovit* or written confession of the action (or confession of judgment as it is frequently called), by virtue of which the plaintiff enters judgment. See *COGNOVIT*.

§ 11. **De melioribus damnis.**—Where, in an action against several persons for a joint tort, the jury by mistake sever the damages by giving heavier damages against one defendant than against the others, the plaintiff may cure the defect by taking judgment for the greater damages (*de melioribus damnis*) against that defendant and entering a *nolle prosequi* (*q. v.*) against the others. Archb. Pr. 406.

The following kinds of judgment are peculiar to the Queen's Bench Division of the English High Court; some of them are rare in practice, if not obsolete:

§ 12. **Of assets in futuro.**—Judgment of assets *in futuro* or *quando acciderint* (shortly "judgment quando"); if an executor is sued for a debt of his testator and pleads *plene administravit* (*q. v.*), or if an heir is sued and pleads *riens per descent* (*q. v.*), the plaintiff in his reply may confess the truth of the plea and pray judgment of assets *in futuro*; or if an executor pleads *plene adm. præter*, the plaintiff may have immediate judgment of the assets acknowledged to be in the hands of the defendant, and of assets *in futuro* for the residue. A judgment of assets *quando acciderint*, or *in futuro*, is one to be levied when assets shall come to the hands of the heir or executor. Archb. Pr. 1006 *et seq.*; Sm. Ac. (11 edit.) 363. See *SCIRE FACIAS*.

§ 13. **Special judgment against executor, &c.—General judgment.**—If an heir or executor pleads any other defence and fails, the judgment is usually special, viz., that the debt be levied of the goods or land of the testator as the case may be; but if he pleads a defence which is false to his knowledge (*e. g. ne unques executor* or *riens per descent*) then the judgment may be general, viz., that the debt be levied as if the action had been brought against him for his own debt. *Id.*

§ 14. **Chancery judgments—Personal.**—In the Chancery Division judgments are generally known by names indicating their objects. Thus, a judgment directing an account to be taken is called a "judgment for an account," and a judgment entitling a mortgagor to redeem the mortgaged property is a judgment for redemp-

tion. In an action against a mortgagor, the judgment may be both a personal judgment directing the defendant to pay the mortgage debt, and a foreclosure judgment, or judgment of sale, enabling the plaintiff to foreclose or sell the mortgaged property on default in payment. *Greenough v. Littler*, 15 Ch. D. 93. See *infra*, § 20.

§ 15. **Married woman.**—Judgment against the separate estate of a married woman on a covenant entered into by her is in a special form. *Pike v. Fitzgibbon*, 14 Ch. D. 837. See *ENGAGEMENT*.

§ 16. **Execution of judgments.**—A judgment is enforced by execution against the person or property of the party against whom it is given. (See *Birmingham Estates Co. v. Smith*, 13 Ch. D. 506. See, also, *EXECUTION*, §§ 3–6.) Formerly, in England, a judgment for the payment of money operated as a charge upon all the lands, tenements, and hereditaments of the person against whom it was entered up, in the same way as if he had charged them by writing under his hand. Provision was made for registration of such judgments. (See *REGISTRATION*.) Now, however, no judgment entered up after the 29th July, 1864, affects any land until it has been actually delivered in execution; the writ is registered in the name of the debtor (Stats. 1 and 2 Vict. c. 110; 2 and 3 Vict. c. 11; 23 and 24 Vict. c. 38; 27 and 28 Vict. c. 112; Wms. Real Prop. 84 *et seq.*; Dart Vend. 456; Wats. Comp. Eq. 464; *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275.) The old English rule, in this respect, still prevails in most, if not all of the States; the judgment becoming a lien upon real estate as soon as entered or docketed, but not on personal property until levy made.

§ 17. **Removal and enforcement of judgments.**—A judgment may, in some cases, be enforced in other courts than that in which it was originally given; thus, a judgment of a county court or other inferior court may, in certain cases, be removed (in England) into the High Court of Justice, (and in some States, *e. g.* New York,) such judgment becomes, when docketed, for purposes of enforcement, the judgment of the Supreme Court or Court of Common Pleas, and execution may be issued as if it had been a judgment of the higher court.

§ 18. **Conversely an inferior court may, in a proper case, commit a debtor to**

prison for non-payment of a sum due under a judgment of a higher court.

§ 19. **Registration of Scotch and Irish judgments.**—By the Judgments Extension Act, 1868, a judgment obtained in a superior court of England, Scotland, or Ireland, may be registered in a superior court of either of the other two countries, and then has the same effect as if it had been originally obtained in the latter court. This is done for the purpose of issuing execution in England on a judgment obtained in Scotland or Ireland, and *vice versa*. The judgments office now forms part of the central office of the Supreme Court, (Judicature (Officers) Act, 1879.) As to the duties of the registrar of judgments, see § 14, and Rules of Court, December, 1879, and April, 1880.

§ 20. **Transfer of judgment.**—A judgment may in some cases be transferred from one person to another. Thus, where in a foreclosure action against the mortgagor of land, and a person who had purchased the equity of redemption from him, personal judgment for the mortgage debt was given against the mortgagor, and a foreclosure judgment against the mortgagor and his purchaser, it was ordered, that in the event of the purchaser redeeming the mortgage, the mortgagee (the plaintiff) should transfer to him the benefit of the personal judgment against the mortgagor, and that he should be at liberty to enforce it in the name of the plaintiff upon indemnifying him against his costs and expenses. *Greenough v. Littler*, 15 Ch. D. 93. As to assigning judgments to sureties, see SURETY.

§ 21. **Action on judgment.**—In some cases a judgment may give rise to a fresh cause of action. Thus, if it becomes necessary to enforce a judgment against persons who have succeeded to the liability of the original defendants, an action must be brought for that purpose. (*Att.-Gen. v. Corporation of Birmingham*, 15 Ch. D. 423.) So an action may be brought to set aside a judgment obtained by fraud. (*Flower v. Lloyd*, 6 Ch. D. 297, 10 Ch. D. 327; *Lancaster Banking Co. v. Cooper*, 9 Ch. D. 594.) At common law, every judgment for payment of a sum of money creates a debt on which the successful party may bring an action, and in some cases he could not enforce it in any other way, *e. g.* if he had allowed a year and a day to elapse without issuing execution; but such a proceeding was never favored if there was another remedy for enforcing

the judgment. The Stat. 13 Edw. I. c. 45, enabled a plaintiff to bring a *scire facias* (*q. v.*) on his judgment after a year and a day. (2 Wms. Saund. notes to *Jeffreson v. Morton*, and *Underhill v. Devereux*.) And to discourage unnecessary actions on judgments, the Stat. 43 Geo. III. c. 46 directed that the plaintiff should not be entitled to costs, except by special order of the court. Under the modern practice, execution may be issued as of right within five (in some jurisdictions, six) years from the entry of the judgment, and by leave of the court at any time afterwards, not exceeding twenty years, without bringing an action on the judgment, and such actions therefore appear to be practically obsolete.

§ 22. **Foreign judgments.**—A judgment given *in personam* for an ascertained sum by a foreign court of competent jurisdiction, is considered in England and America as *prima facie* evidence of the defendant's liability to pay the amount to the plaintiff, and may, therefore, be the subject of an action in the courts. So, if A. brings proceedings against B. in a foreign country and fails, and then sues B. for the same cause of action in an English or American court, B. may defeat the second action by pleading the foreign judgment as *res judicata*. (Westl. Pr. Int. Law (2 edit.) 301; *In re Boyse*, 15 Ch. D. 591; *Pig. For. Jud.* See 14 and 15 Vict. c. 99, § 7.) In the latter case the judgment is conclusive. Where, however, an action is brought here to enforce a foreign judgment, it seems that our courts will so far examine into it that if the proceedings by which it was obtained, or the law on which it is founded, are "repugnant to natural justice," or contrary to some principle of morality or public policy recognized by our law, they will refuse to enforce it. Westl. Pr. Int. Law 311.

§ 23. **Criminal.**—In criminal proceedings, the judgment is the sentence of the court on the verdict of the petty jury, or on the prisoner pleading guilty to the indictment. (Archb. Cr. Pl. 249.) Where the jury acquits the prisoner, the judgment is, that he be discharged of the premises. If he pleads guilty or is convicted, the judgment declares the punishment which he has to suffer, *e. g.* death, imprisonment, fine, &c. (*Id.* 183; 4 Steph. Com. 443.)

Formerly, in England, judgment of death might be recorded without being pronounced where it was intended to relieve the prisoner, but this has been abolished: Stats. 4 Geo. IV. c. 48; 24 and 25 Vict. c. 95. See APPEAL; RES JUDICATA; WRIT OF ERROR.

JUDGMENT, (defined). 56 Ala. 25; 74 Ind. 550; 3 La. Ann. 34; 109 Mass. 325; 110 Id. 491; 3 Metc. (Mass.) 520; 23 Wend. (N. Y.) 587; 1 Wyom. T. 229.

— (what is). 2 Pet. (U. S.) 464; Penn. (N. J.) 204; 12 Johns. (N. Y.) 31; 14 Wend. (N. Y.) 75.

— (what is not). 122 Mass. 301; Penn. (N. J.) 112.

— (when may be opened). Coxe (N. J.) 201.

— (when void). 15 Johns. (N. Y.) 121.

— (manner of proving). 4 Cow. (N. Y.) 527.

— (lien of). 5 Pet. (U. S.) 358; 7 Id. 481; 6 Paige (N. Y.) 457; 1 Watts (Pa.) 54.

— (when assignment may be by parol). 15 Mass. 481; 3 Wheel. Am. C. L. 176.

— (when writ of error lies from). 14 Pet. (U. S.) 563.

— (of a court of competent jurisdiction, effect of). 9 Pet. (U. S.) 8; 10 Id. 472, 473; 1 Halst. (N. J.) 275.

— (action upon). 2 Dall. (U. S.) 302; 9 Mass. 133; 2 Pick. (Mass.) 448; 4 Cow. (N. Y.) 292.

— (of court of another State). 7 Cranch (U. S.) 481; 3 Wheat. (U. S.) 234; 1 Pet. (U. S.) C. C. 155; 19 Johns. (N. Y.) 162; 3 Wend. (N. Y.) 267; D. Chip. (Vt.) 59.

— (in a statute). 53 Barb. (N. Y.) 407; 2 Cai. (N. Y.) 312; 1 Cow. (N. Y.) 150, n. (d); 76 N. Y. 555, 557; 64 N. C. 39; L. R. 6 C. P. 245, 246.

— (in statute giving an appeal). 5 Mass. 195; 9 Id. 230; 11 Id. 275; 5 Pick. (Mass.) 206.

— (in revenue law). 54 Ala. 403.

— (decision on demurrer is). 2 Minn. 34.

— (includes an order of filiation). 2 Harr. (Del.) 361.

JUDGMENT BOOK, (in the code). 81 N. Y. 182.

JUDGMENT CREDITOR.—One who is entitled to enforce a judgment by execution (*q. v.*) The owner of an unsatisfied judgment.

JUDGMENT DEBTOR.—One against whom a judgment, ordering him to pay a sum of money, stands unsatisfied. He may, by order of the court or a judge, be orally examined by the judgment creditors as to debts owing to him by third parties, and be compelled to produce books and documents, with a

view to attaching any debts due to him. See CREDITORS' SUIT; SUPPLEMENTARY PROCEEDINGS.

JUDGMENT DEBTOR SUMMONS.

—Under the English Bankruptcy Act, 1861, §§ 76-85, these summonses might be issued against both traders and non-traders, and in default of payment of, or security, or agreed composition for the debt, the debtors might be adjudicated bankrupt. This act was repealed by 32 and 33 Vict. c. 83, § 20. The 32 and 33 Vict. c. 71, however, (Bankruptcy Act, 1869,) provides (§ 7) for the granting of a "debtor's summons," at the instance of creditors, and in the event of failure to pay or compound, a petition for adjudication may be presented, unless in the events provided for by the section. See DEBTOR SUMMONS.

JUDGMENT DEBTS.

—Debts, whether on simple contract or by specialty, for the recovery of which judgment has been entered up, either upon a *cognovit*, or upon a warrant of attorney, or as the result of a successful action. See DEBT, § 3.

JUDGMENT, FINAL, (defined). 6 Conn. 61; 7 Id. 441; 17 Id. 72.

— (what is). 21 Conn. 284; 9 Mass. 241; 1 Pick. (Mass.) 286; 7 Wheel. Am. C. L. 378.

— (what is not). 9 Pet. (U. S.) 4; 3 Wheat. (U. S.) 433; 12 Id. 135; 6 Conn. 59; 6 Wheel. Am. C. L. 254.

— (in an insurance policy). 8 Mass. 396.

— (in a statute). 7 Mass. 342; 4 East 349.

JUDGMENT, FOREIGN, (what is). Penn. (N. J.) 399.

— (what is not). 1 Gr. (N. J.) 68.

— (action on). 4 Campb. 29, n.

JUDGMENT IN PERSONAM, or IN REM.—See JUDGMENT, §§ 2, 3.

JUDGMENT IN REM, (defined). 42 Me. 429, 443.

JUDGMENT, INTERLOCUTORY, (defined). 6 Conn. 61.

JUDGMENT NISI.—See NISI.

JUDGMENT NOTE.—A promissory note in the usual form, but containing, in addition, a power of attorney to appear and enter a confession of judgment for a sum therein named against the maker, in case of default of payment.

JUDGMENT PAPER.—In English law, a sheet of paper containing an *incipitur* (*q. v.*) of the pleadings, upon which the master will sign judgment. 1 Archb. Pr. 229, 306, 343.

JUDGMENT RECORD, or ROLL.—

§ 1. In American practice.—A formal transcript of the proceedings in an action

leading to the judgment and of the judgment itself, the authentic collection of the papers, proceedings, and judgment in their order, signed by the clerk, and filed in the records of the court.

§ 2. **In English practice.**—A parchment roll upon which all proceedings in the cause up to the issue, and the award of *venire* inclusive, together with the judgment which the court had awarded in the cause, were entered. This roll, when thus made up, was deposited in the treasury of the court, in order that it might be kept with safety and integrity. In practice, the making up and depositing the judgment roll was generally neglected, unless in cases where it became absolutely necessary to do so; as when, for instance, it was required to give the proceedings in the cause in evidence in some other action; for in such a case the judgment-roll, or an examined copy thereof, was the only evidence of them that could be admitted. (Sm. Ac. 184.) At the present day there seems to be no judgment-roll of any sort in use, just as there is now no issue-roll, unless it should be in the House of Lords.—*Brown*.

JUDGMENT ROLL, (defined). 34 Cal. 391.

Judicandum est legibus non exemplis (4 Co. 33): We are to judge by the laws, not by examples.

JUDICATORES TERRARUM.—Persons in the county palatine of Chester, who, on a writ of error, were to consider of the judgment given there, and reform it, otherwise they forfeited £100 to the crown by custom. Jenk. Cent. 71.

JUDICATURE.—The state of those employed in the administration of justice; and in this sense it is nearly synonymous with judiciary. This term is also used to signify a tribunal; and sometimes it is employed to show the extent of jurisdiction; as, the judicature is upon writs of error, etc. (Com. Dig. *Parliament* (L 1). *And, see, Id. Courts* (A).)—*Bouvier*.

JUDICATURE ACTS.—*See* CENTRAL OFFICE; COURT OF APPEAL; HIGH COURT OF JUSTICE; SUPREME COURT OF JUDICATURE.

Judices non tenentur exprimere causam sententiæ suæ (Jenk. Cent. 75): Judges are not bound to explain the reason of their sentence.

JUDICES ORDINARII.—Ordinary judges. *See* JUDEX ORDINARIUS.

JUDICES PEDANEL.—In the Roman law, inferior or assistant judges, in the times of the *extraordinaria judicia*. They had jurisdiction in causes up to 300 solidi; but the jurisdiction was consensual. They combined the functions of judge and jury. Hunt. Rom. L. (1 edit.) 804.

Judici officium suum excedenti non paretur (Jenk. Cent. 139): A judge exceeding his office is not to be obeyed.

Judici satis poena est, quod Deum habet ultorem (1 Leon. 295): It is punishment enough for a judge that he has God as his avenger.

Judicia in curia regis non annihilentur, sed stent in robore suo quousque per errorem aut attinctum adnulentur: Judgments in the king's court are not annihilated, but remain in force until annulled by error or attain.

Judicia in deliberationibus crebro maturescunt; in accelerato processu nunquam (3 Inst. 210): Judgments frequently become matured by deliberations: never by hurried process or precipitation.

Judicia posteriora sunt in lege fortiora (8 Co. 97): The later decisions are the stronger in law.

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur (2 Inst. 537): Judgments are, as it were, the words of the law, and are received as truth.

JUDICIAL.—Appertaining to the office of a court or judge. *See* EXTRAJUDICIAL; REMEDY; WRIT.

JUDICIAL, (defined). 22 N. Y. 67, 82, 84.

JUDICIAL ACTS.—Acts requiring the exercise of some judicial discretion, as distinguished from ministerial acts, which require none. Thus, numerous English statutes give summary power to justices of the peace, and declare that certain acts shall only be valid if done by two magistrates. If it be only a ministerial act, it is not requisite that the two magistrates should be together at the time of doing the act; if it be judicial, they must.

JUDICIAL ACTS, (what are). 11 Abb. (N. Y.) Pr. 301, 315; 2 Hill (N. Y.) 135.
— (what are not). 26 Mich. 176.

JUDICIAL ADMISSIONS.—Admissions which appear of record, as the admissions of the party making them

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.—

§ 1. This court was created by Stat. 3 and 4 Will. IV. c. 41, for the purpose of hearing all appeals or complaints in the nature of appeals, which, before the passing of the act, could be brought before the king or the king in council, and also certain other appeals, which were previously heard by other tribunals.

§ 2. The judicial committee consists of the president of the Privy Council, the lord chancellor, and as a general rule, all the members of the Court of Appeal constituted by the Judicature Act, 1875, and some other judges, whose attendance is not often required. (Stats. 3 and 4 Will. IV. c. 41; 5 Vict. c. 5; 6 and 7 Vict. c. 38; 14 and 15 Vict. c. 83; 20 and 21 Vict. c. 77; Macph. Jud. Com. *passim*.) By the Judicial Committee Act, 1871, the crown was empowered to appoint, and did appoint, four salaried judges of the judicial committee; on their places becoming vacant they will not be filled up, but two additional lords of appeal in ordinary will be appointed. See HOUSE OF LORDS.

§ 3. The following are the principal matters in which the judicial committee have jurisdiction (Macph. Jud. Com. *passim*): (1) Appeals from courts in the colonies or dependencies of the United Kingdom, such as India, Canada, Australia, the Channel Islands, &c. In general, the right to appeal is limited to cases involving a certain minimum value, unless special leave to appeal is obtained. (See *ante* p. 65, n.) (2) Complaints of amotion from office. (See AMOTION, § 2.) (3) Ecclesiastical appeals. (See ECCLESIASTICAL COURTS.) (4) Appeals from the lord chancellor in idiocy and lunacy cases. (5) Applications for the confirmation and extension of patents. See PATENT.

JUDICIAL CONFESSION.—A confession of guilt, made by a prisoner before a magistrate, or in court, in the due course of legal proceedings. 1 Greenl. Ev. § 216.

JUDICIAL CONVENTIONS.—Agreements entered into in pursuance of an order of court.

JUDICIAL DECISION, (in agreement to submit to). 1 Sandf. (N. Y.) 78.

JUDICIAL DECISIONS.—The opinions or determinations of the judges in causes before them.

JUDICIAL DISCRETION.—Such matters in the course of a trial as are to be decided summarily by the judge, and cannot be questioned afterwards, are said to be within his discretion. Various matters incidental to the conduct of a cause before trial, are also by statute left in the discretion of the court, or a judge at chambers. Discretion is thus defined by Coke, in *Rooke's Case*, 40 Eliz.: "Discretion is a science or understanding, to discern between falsity and truth; between wrong and right; between shadows and substance; between equity and colorable glosses and pretences; and not to do according to their wills and private affec-

tions; for, as one saith, *talis discretio discretionem confundit*." Coke also quotes the maxim, *Discretio est scire per legem quid sit justum*. (10 Co. 140.)—Wharton.

JUDICIAL DISCRETION, (defined). 26 Wend. (N. Y.) 143, 152.

JUDICIAL DOCUMENTS.—Proceedings relating to litigation. They are divided into: (1) Judgments, decrees, and verdicts; (2) depositions, examinations, and inquisitions taken in the course of a legal process; (3) writs, warrants, pleadings, &c., which are incident to any judicial proceedings. See DOCUMENT, § 2.

JUDICIAL DOCUMENTS, (what are). 27 Me. 308.

JUDICIAL MORTGAGE.—The lien resulting from judgments, under the law of Louisiana, whether rendered on contested cases, or by default, whether final or provisional, in favor of the person obtaining them. La. Civ. Code, art. 3289.

JUDICIAL NOTICE.—In the law of evidence, facts as to the existence or truth of which no evidence need be adduced, are said to be within the judicial notice of the court. See NOTICE, § 1.

JUDICIAL OFFICER, (who is). 3 Cranch (U. S.) 163; 2 Cai. (N. Y.) 312; 3 Barn. & Ald. 260; 1 Bl. Com. 348.

—— (who is not). 14 Cal. 12; 17 Wend. (N. Y.) 17; 25 *Id.* 11; 1 Const. (S. C.) 45.

JUDICIAL POWER.—The authority vested in courts and judges, as distinguished from the executive and legislative power.

JUDICIAL POWER, (defined). 1 Am. L. J. 446.

—— (what is). 8 Pick. (Mass.) 218; 19 Abb. (N. Y.) Pr. 136; 29 How. (N. Y.) Pr. 176; 1 Salk. 200; 3 Wheel. Am. C. L. 551.

—— (in United States constitution). South. (N. J.) 38, 42.

—— (of the United States). 40 Wis. 175, 201.

JUDICIAL PROCEEDINGS.—Proceedings in a court of justice; or which relate to, or proceed from such a court.

JUDICIAL PROCEEDINGS, (what are not). 1 Hughes (U. S.) 533.

—— (in a statute). 17 Ga. 68.

JUDICIAL SALE.—A sale under the judgment, order, or decree of a court;

a sale under judicial authority, by an officer legally authorized for the purpose, such as a sheriff's sale, an administrator's sale, &c.

JUDICIAL SALE, (defined). 8 How. (U. S.) 495, 547; 81 Pa. St. 122, 130.
— (what is). 30 Iowa 65; 75 N. C. 219.

JUDICIAL SEPARATION.—A decree of judicial separation may be pronounced by the English High Court in the Probate, Divorce and Admiralty Division, on the petition of either husband or wife (1) in all cases in which a divorce *a mensâ et thoro* (*q. v.*) might have been obtained in the Ecclesiastical Courts, and (2) on the ground of either adultery or cruelty, or desertion without reasonable cause for two years or upwards. (Browne Div. 29; Macq. Husb. & W. 220; 20 and 21 Vict. c. 85, §§ 7, 16.) The decree has the same effect as a divorce *a mensâ et thoro* had, that is to say, it does not affect the marriage, but it puts an end to cohabitation, and places the wife in the position of a *feme sole* as regards her capacity of acquiring property, &c. Gibs. Cod. 445, n. (b). See **ALIMONY**; **DIVORCE**; **LIMITED DIVORCE**; **PROTECTION ORDER**; **SETTLEMENT**.

JUDICIAL WRITS.—Writs issuing from the court in which proceedings are commenced, under its seal, and tested in the name of its chief judge, as distinguished from original writs, which issued out of the Court of Chancery.

JUDICIAL WRITS, (defined). 3 Bl. Com. 282.

JUDICIARY.—(1) Anything done in the course of the administration of justice. (2) The body of officers charged with the administration of justice; the judges taken collectively.

Judiciis posterioribus fides est adhibenda (13 Co. 14): Credit is to be taken to the later decisions.

Judicis est judicare secundum allegata et probata (Dyer 12): It is the duty of a judge to decide according to facts alleged and proved.

Judicis est jus dicere non dare (Lofft 42): It is for the judge to administer, not to make laws.

Judicis officium est ut res, ita tempora rerum quærere (Co. Litt. 171): It is the duty of a judge to inquire into the times of things, as well as into things themselves.

JUDICIUM.—Judicial authority or jurisdiction; a court or tribunal; a judicial hearing or other proceeding; a verdict or judgment.

Judicium a non suo judice datum nullius est momenti (10 Co. 70): A judgment given by one who is not the proper judge is of no force.

JUDICIUM DEI.—Judgment of God. A term applied by our ancestors to the now prohibited trials of secret crimes; as those by arms and single combat; and the ordeals, or those by fire or red-hot ploughshares, by plunging the arms into boiling water, or the whole body into cold water; which were founded on the belief that God would work a miracle rather than suffer truth and innocence to perish. *Si super defendere non possit judicio Dei, scil. aquâ vel ferro, fieret de eo justitia*. These customs were a long time kept up even among Christians; and they are still now in use among some nations. Trials of this sort were usually held in churches in presence of the bishops, priests, and secular judges, after three days' fasting, confession, communion, and many adjurations and ceremonies, described at large by Du Cange.—*Encycl. Lond.*

Judicium est quasi juris dictum: Judgment is, as it were, a dictum of law.

Judicium non debet esse illusorium; suum affectum habere debet: A judgment ought not to be illusory; it ought to have its consequence.

JUDICIUM PARIUM.—The judgment of one's peers. See **JURY**.

Judicium redditur in invitum (Co. Litt. 248 b): Judgment is given against one, whether he will or not.

Judicium semper pro veritate accipitur (2 Inst. 380): Judgment is always taken for truth.

JUG.—A watery place.—*Cowell*.

JUGE.—In the French law, a judge.

JUGES D'INSTRUCTION.—In the French law, officers subject to the *Procureur-Impérial* or *Général*, who receive in cases of criminal offences the complaints of the parties injured, and who summon and examine witnesses upon oath, and after communication with the procureur-imperial draw up the forms of accusation. They have also the right, subject to the approval of the same superior officer, to admit the accused to bail. They are appointed for three years, but are re-eligible for a further period of office. They are usually chosen from among the regular judges.—*Brown*.

JUGULATOR.—A cut-throat or murderer.—*Cowell*.

JUGUM TERRÆ.—A yoke of land, containing half a plough-land.—*Domesd*; Co. Litt. 5 a.

JUNCARE.—To strew rushes.

JUNCARIA.—See **JONCARIA**.

JUNIOR, (no part of a man's name). 8 Conn. 289; 1 Pick. (Mass.) 388; 11 Minn. 78, 87; 14 Barb. (N. Y.) 261; 10 Paige (N. Y.) 170; 4 Wheel. Am. C. L. 170.

JUNIOR, (effect of omission). 8 Conn. 294; 10 Paige (N. Y.) 170; 7 Johns. (N. Y.) 549; 11 Wend. (N. Y.) 522.

JUNTA, or **JUNTO**.—A select council for taking cognizance of affairs of great consequence requiring secrecy; a cabal or faction. This was a popular nickname applied to the Whig ministry in England, between 1693–96. They clung to each other for mutual protection against the attacks of the so-called Reactionist Stuart party.

JURA.—Rights; laws.

Jura ecclesiastica limitata sunt intra limites separatos: Ecclesiastical laws are limited within separate bounds.

Jura eodem modo destruuntur quo constituuntur: Laws are abrogated by the same means as those by which they are made.

JURA FISCALIA.—Fiscal rights; rights of the Exchequer. 3 Bl. Com. 45.

JURA IN RE.—Rights *in* a thing, as opposed to rights *to* a thing (*jura ad rem*). See **JUS IN RE**.

Jura naturæ sunt immutabilia: The laws of nature are unchangeable.

JURA PERSONARUM.—The rights of persons.

Jura publica anteferenda privatis (Co. Litt. 130): Public rights are to be preferred to private.

Jura publica ex privato promiscue decidi non debent (Co. Litt. 181 b): Public rights ought not to be promiscuously determined in analogy to a private right.

JURA REGALIA.—Royal rights; royal prerogatives. See 1 Bl. Com. 241 *et seq.*; Bac. Abr. (Prerogative.) As to these rights in the county of Durham, see 21 and 22 Vict. c. 45.

Jura regis specialia non conceduntur per generalia verba: The special rights of the king are not affected by general words.

JURA RERUM.—The rights which a person may acquire in things.

Jura sanguinis nullo jure civili dirimi possunt (D. 50, 17, 8; Bac. Max. reg. 11): The rights of blood cannot be destroyed by any civil right.

JURA SUMMA IMPERII.—The supreme rights of dominion.

JURAMENTA CORPORALIA.—Corporal oaths.

JURAMENTUM.—An oath.

JURAMENTUM CALUMNIÆ.—See **ANTE JURAMENTUM**; **CALUMNIÆ JURAMENTUM**.

Jurare est Deum in testem vocare, et est actus divini cultus (3 Inst. 165): To swear is to call God to witness, and is an act of religion.

JURAT.—A memorandum written at the end of an affidavit, stating the place where, and the date when, the affidavit was sworn, followed by the signature of the commissioner, notary, or other person before whom it was sworn, and concluding with his description. See Sm. Ac. 83.

JURATA.—The jury-clause in a *Nisi Prius* record in England. The entry *jurata ponitur in respectu*, is abolished. Com. L. P. Act, 1852, § 104.

JURATION.—The act of swearing; the administration of an oath.

JURATOR.—A juror; a compurgator (*q. v.*)

Juratores sunt judices facti (Jenk. Cent. 61): Juries are the judges of fact.

JURATORY CAUTION.—In the Scotch law, a description of caution (security) sometimes offered in a suspension or advocation where the complainer is not in circumstances to offer any better.—*Bell Dict.* See **CAUTION**.

JURATS.—Officers in the nature of aldermen, sworn for the government of many corporations. The twelve assistants of the bailiff in Jersey are called "jurats."

JURE.—By right or law; according to law.

JURE BELLII.—By the right, or law of war.

JURE CORONÆ.—In right of the crown. See **FRANCHISE**; **PREROGATIVE**.

JURE DIVINO.—By divine right.

JURE ECCLESIAE.—In right of the church.

JURE EMPHYTEUTICO.—By the law of rents and services. See **EMPHYTEUSIS**.

JURE GENTIUM.—By the law of nations.

JURE MARITI.—See **JUS MARITI**.

Jure naturæ æquum est neminem cum alterius detrimento et injuria fieri locupletiores (D. 50, 17, 206): By the law of nature it is not just that any one should be enriched by the detriment or injury of another.

JURE PROPINQUITATIS.—By right of relationship.

JURE REPRESENTATIONIS.—By right of representation.

JURE UXORIS.—In right of a wife.

JURIDICAL.—Acting in, or relating to, the distribution of justice.

JURIDICAL DAYS.—Days in court on which the laws are administered.

Juris effectus in executione consistit (Co. Litt. 289b): The effect of the law consists in the execution.

JURIS ET DE JURE.—Of law and from law. A conclusive presumption, which cannot be rebutted, is called a presumption *juris et de jure*.

JURIS UTRUM.—A writ or action by an incumbent to recover possession of land held by him in right of the church, &c. (Litt. § 645 *et seq.*) It was so called because it raised the question whether the land was the lay fee of the tenant (defendant) or *frankalmoigne* belonging to the church. Britt. 234 b.

JURISCONSULTI, or JURISPRUDENTES.—Men who studied the forms and, in time, the principles of civil law, and expounded them for the benefit of their friends and dependents.

JURISDICTION.—

§ 1. **Exclusive—Concurrent.**—Jurisdiction is the power of a court or judge to entertain an action, petition or other proceeding. When a proceeding in respect of a certain subject-matter can only be brought in one court, that court is said to have exclusive jurisdiction; when it can be brought in any one of several courts, they are said to have concurrent jurisdiction.

§ 2. **General—Limited.**—Where the jurisdiction of a court is limited either by the amount or value of the property in litigation, or with reference to the question where the cause of action arose, it is called a court of limited jurisdiction, as opposed to a court of general jurisdiction.

§ 3. **Original—Appellate.**—A court is said to have original jurisdiction in a particular matter when that matter can be initiated before it; while a court is said to have appellate jurisdiction when it can only go into the matter after it has been adjudicated on by a court of first instance. *See* APPEAL; COURT.

§ 4. **Consultative—Judicial.**—It is said that in some cases one court may assist another by giving its opinion on a matter pending in the latter court; in such a case the former court is said to act in its consultative jurisdiction, as opposed to its ordinary or judicial jurisdiction. *Overseers of Walsall v. L. & N. W. R. Co.*, 4 App. Cas. 30.

§ 5. **Auxiliary.**—Where the different jurisdictions of the common law and chancery courts exist, the Court of Chancery, in addition to its exclusive and concurrent jurisdiction, is said to have an auxiliary or ancillary jurisdiction, by which is meant, that it entertains suits for relief required to obtain complete justice in another court. The principal instances of such suits are bills for discovery, bills for the perpetuation of testimony, and bills of peace (*q. v.*) *Haynes Eq.* 161. *See* DE BENE ESSE; QUIA TIMET.

As to the jurisdictions of the various courts, *see* the respective titles.

§ 6. **Territorial.**—Jurisdiction also signifies the district or geographical limits within which the judgments or orders of a court can be enforced or executed. This is sometimes called "territorial jurisdiction." (*In re Smith*, 1 P. D. 300.) In the practice of the English High Court, it is not usual to allow an action to be brought if it is obvious that it cannot be enforced, such as an action to recover land in a foreign country (*see* notes to *Mostyn v. Fabrigas*, 1 Sm. Lead. Cas. 689); nor will the court allow an action to be brought against a person who is out of the jurisdiction, unless the property in question in the action (if any) is situate within the jurisdiction, or unless some part of the cause of action arose within the jurisdiction. Rules of Court, xi. *See* CAUSE OF ACTION; IN PERSONAM; SERVICE.

JURISDICTION, (defined). 5 How. (U. S.) 176, 186; 12 Pet. (U. S.) 657; 10 Cal. 292, 293; 43 *Id.* 365; 44 *Id.* 84; 3 Metc. (Mass.) 460; 43 Tex. 440.

— (when general and when special). 3 Harr. (N. J.) 73.

— (when intended). 1 Hill (N. Y.) 154.

— (can not be acquired by consent of parties). 3 Litt. (Ky.) 332; 7 Mart. (La.) 274; *Coxe* (N. J.) 70; 3 Gr. (N. J.) 344; 1 Hill (N. Y.) 343; 1 Nott & M. (S. C.) 192; 2 *Id.* 487; 2 Yerg. (Tenn.) 441; 1 Call (Va.) 48; 1 Munf.

(Va.) 160; 3 Rand. (Va.) 394; 3 Wheel. Am. C. L. 541.

JURISDICTION, (of State courts). 6 Halst. (N. J.) 378.

— (in extradition treaty). 18 Int. Rev. Rec. 18.

JURISDICTION, COURT OF INFERIOR, (surrogate's court is). 1 Hill (N. Y.) 130.

JURISDICTION OF THE PERSON, (defined). 73 N. Y. 12, 27.

JURISDICTION OF THE SUBJECT-MATTER, (defined). 73 N. Y. 12, 27.

JURISINCEPTOR.—A student of the civil law.

JURISPERITUS.—Skilled or learned in the law.

JURISPRUDENCE.—

§ 1. In the proper sense of the word, jurisprudence is the science of law, namely, that science which has for its function to ascertain the principles on which legal rules are based, so as not only to classify those rules in their proper order and show the relation in which they stand to one another, but also to settle the manner in which new or doubtful cases should be brought under the appropriate rules. Jurisprudence is more a formal than a material science; it has no direct concern with questions of moral or political policy, for they fall under the province of ethics and legislation, but when a new or doubtful case arises to which two different rules seem, when taken literally, to be equally applicable, it may be, and often is, the function of jurisprudence to consider the ultimate effect which would be produced if each rule were applied to an indefinite number of similar cases, and to choose that rule which, when so applied, will produce the greatest advantage to the community.

§ 2. Jurisprudence is mainly based on comparative law, *i. e.* on the comparative study of the legal institutions of various countries, because such a study makes it more easy to separate the essential elements of the science from its historical accidents. See Holl. Jur. 7; Aust. Jur.; Mark. El. L. *passim*.

§ 3. Jurisprudence is also used, incorrectly, as synonymous with law. "The imposing quadrisyllable is constantly introduced into a phrase, solely on the grounds of euphony. Thus, we have books upon 'Equity Jurisprudence' which are nothing more nor less than treatises

upon the law administered by courts of equity; and we hear of the jurisprudence of France or Russia, when nothing else is meant than the law which is in force in those countries respectively." Holl. Jur. 4, where Austin's division of jurisprudence into "general" and "particular" is shown to be untenable.

Jurisprudentia est divinarum atque humanarum rerum notitia, justī atque injustī scientia (Inst. 1, 1, 1): Jurisprudence is the knowledge of things divine and human; the science of the right and the wrong. Sand. Just. (5 edit.) 5.

JURIST.—A civil lawyer; a civilian; one versed in the science of law; one familiar with the law of nations.

JURNEDUM.—A day's traveling.

JUROR—JURY.—NORMAN-FRENCH: *juror* (Britt. 134a), is derived from *jurata*, which seems to be a contraction for *assisa* or *recognitio jurata*, the sworn assise or recognition (*q. v.*) (F. H. B. 165e. "*Quic barones regni nostri in assisis juratis*," &c.) from the oath taken by the members of the assise, who were called "jurors," to try the cause justly. The modern jury, however, is not directly derived from the assise, which was a statutory mode of trial, but from the practice which grew up after the introduction of the assise, of suitors consenting that their actions should be tried by a *jurata* or jury, in preference to the trial by duel. 1 Reeves Hist. Eng. Law 335.

§ 1. A jury is a number of persons summoned to inquire on oath into a question of fact depending in a judicial proceeding. The members of the jury are called "jurors" or "jurymen."

§ 2. Civil actions.—In actions in courts of record, when the trial takes place before a jury, the jurors are twelve men possessing the necessary qualification (*q. v.*) Common juries are summoned, in England, from the class of tradesmen, clerks, &c.; special or struck juries consist of merchants, bankers, independent gentlemen, &c., and are only summoned for the trial of important or difficult cases, either party to an action being entitled to have the case so tried at the risk of having to bear the extra expense. The jurors are selected by ballot from the panel or list furnished by the sheriff or other summoning officer (*see* PANEL), subject to the right of challenge (*q. v.*) by the parties. As to the cases in which a trial by jury takes place, and the course which it generally follows, *see* TRIAL. As to the discharge of a juror, *see* DISCHARGE, § 6; WITHDRAWAL.

§ 3. **Writ of inquiry—Elegit.**—Juries are also summoned in actions for other purposes than that of trial. Thus, a writ of inquiry (*q. v.*) requires a jury, as does the execution of a writ of *elegit* (*q. v.*)

§ 4. In English County Court actions, a jury consists of five persons (Poll. C. C. Pr. 104); and in justices' courts and other local courts of limited jurisdiction, in America, a jury of six members is common.

§ 5. As to other kinds of juries in civil matters, *see* COURT LEET; EXTENT; HOMAGE; INQUEST OF OFFICE; INQUISITION; JUS PATRONATUS; LUNACY.

In criminal procedure, the following kinds of jury exist:

§ 6. A **grand jury** is summoned for every court of oyer and terminer and general gaol delivery, and at every quarter sessions (*see* those titles), to inquire into, present, and do all those things which shall then and there be commanded them on the part of the State. Their principal duty is to inquire into bills of indictment, and to present them, if they think a *prima facie* case has been made out against the accused. (*See* INDICTMENT; PRESENTMENT.) A grand jury consists of from twelve to twenty-three freeholders, and every presentment must be by twelve at the least. They sit in private. (4 Steph. Com. 361; Stats. 6 Geo. IV. c. 50; 5 and 6 Will. IV. c. 76, § 121; 19 and 20 Vict. c. 54.) The term grand jury, in this sense, seems to be comparatively modern. In Britton, they are called *presentors* (fol. 10a).

§ 7. **Petty jury.**—The jury by which criminal suits (indictments, informations, &c.,) are tried, is sometimes called a "petty jury," as opposed to the grand jury. It consists of twelve persons, who must be of the county where the indictment is found. (4 Steph. Com. 418. *See* VENUE.) They are liable to be challenged. *See* CHALLENGE.

§ 8. **Special jury.**—In important cases of misdemeanor in the English Queen's Bench Division, a special jury may be obtained on the application of either prosecutor or defendant. *Id.* 419; Archb. Cr. Pl. 155.

§ 9. **De medietate linguæ.**—Formerly, every alien who was tried on a criminal charge, in England, was entitled to what was called a jury *de medietate linguæ*, i. e. a jury one-half of which consisted of aliens. This kind of

jury is now abolished, (Naturalization Act, 1870, § 5; it still exists in a few of the States,) but it is said that where an indictment is found against a scholar or other person having the privilege of the University of Oxford, he is entitled to be tried in the University Court by a jury *de medietate*, half of freeholders, and half of matriculated persons. 4 Steph. Com. 327.

§ 10. **Jury of matrons.**—Where, in a criminal prosecution, a female prisoner alleges herself or appears to be pregnant, a jury of twelve matrons may be impanelled to try whether she is so or not. They choose one of their number to be forematron. Archb. Cr. Pl. 187. *See* REPRIEVE.

JUROR'S BOOK.—A list of persons qualified to serve on juries.

JURY.—*See* JUROR.

JURY, (defined). 67 Ill. 172; 11 Nev. 39; 3 Bl. Com. 357.

—(what constitutes). 6 Blackf. (Ind.) 461; 8 *Id.* 561; 4 Ind. 501; 16 *Id.* 496; 3 Cush. (Mass.) 58; 14 Minn. 439; 2 Park. (N. Y.) Cr. 312; 3 Wis. 219.

—(in State constitution). 12 N. Y. 190; 4 Ohio St. 167.

—(right of trial by). 2 Pet. (U. S.) 525; 3 *Id.* 446; 7 *Id.* 552; 1 Mass. 454; 7 *Id.* 275; Coxe (N. J.) 158; 18 Barb. (N. Y.) 451; 62 *Id.* 16; 2 Cow. (N. Y.) 815, 816; 3 *Id.* 706; 37 How. (N. Y.) Pr. 140; 41 *Id.* 86.

JURY-BOX.—The place in court where the jury sit.

JURY-MAN.—One who is impanelled on a jury.

JURY PROCESS.—The writ or process for the summoning of a jury. They were, in England, the *distringas juratores*, or *habeas corpora juratorum*, and the *venire juratores facias*, now abolished. A jury is summoned by precept. *See* 1 Chit. Archb. Pr. (12 edit.) 364, and the 23 and 34 Vict. c. 77.

JURY WOMEN.—*See* DE VENTRE INSPICIENDO; JUROR, § 10.

JUS.—Law, right, equity, authority and rule.

§ 1. A Roman *magistratus* generally did not investigate the facts in dispute in such matters as were brought before him; he appointed a *judex* for that purpose, and gave him instructions. Accordingly, the whole procedure was expressed by the two phrases *Jus* and *Judicium*; of which the former comprehended all that took place before the *magistratus* (*in jure*), and the latter all that took place before the *judex* (*in judicio*). Originally, even the "magistratus" was called "*judex*," as, for instances, the consul

and prætor (Lir. iii. 55); and under the empire the term "judex" often designated the "præses."—*Smith Dict. Antiq.*

§ 2. All law (*jus*) is distributed into two parts—*Jus Gentium* and *Jus Civile*—and the whole body of law peculiar to any State is its *Jus Civile* (Cic. de Orat. i. 44). The Roman law, therefore, which is peculiar to the Roman State, is its *Jus Civile*, sometimes called *Jus Civile Romanorum*, but more frequently designated by the term *Jus Civile* only, by which is meant the *Jus Civile* of the Romans.

§ 3. The *Jus Gentium* is viewed by Gaius as springing out of the *Naturalis Ratio*, common to all mankind, which is still more clearly expressed in another passage (i. 89), where he uses the expression "*omnium civitatem jus*," as equivalent to the *Jus Gentium*, and as founded on the *Naturalis Ratio*.

§ 4. The *Naturale Jus* and the *Jus Gentium* are therefore identical. Cicero (Off. iii. 5) opposes *Natura* to *Leges*, where he explains *Natura* by the term *Jus Gentium*, and makes *Leges* equivalent to *Jus Civile*.

§ 5. In the *partitiones* (c. 37), he also divides *Jus* into *Natura* and *Lex*.

§ 6. There is a threefold division of *Jus* made by Ulpian and others, which is as follows: *Jus Civile*; *Jus Gentium*, or that which is common to all mankind; and *Jus Naturale*, which is common to man and beasts. The foundation of this division seems to have been a theory of the progress of mankind from what is commonly termed a state of nature; first, to a state of society, and then to a condition of independent states. This division had, however, no practical application, and must be viewed merely as a curious theory.

§ 7. The *Jus Civile* of the Romans is divided into two parts: *Jus Civile* in the narrower sense; and *Jus Pontificium*, or the law of religion. This opposition is sometimes expressed by the words *Jus* and *Fas* (*fas et jura sinunt*—*Virg. Georg.* i. 269); and the law of things not pertaining to religion, and of things pertaining to it, are also respectively opposed to one another by the terms *Res Juris Humani et Divini* (*Instit.* ii. tit. 1).

§ 8. The terms *Jus Scriptum* and *Non Scriptum*, as explained in the *Institutes* (i. tit. 2), comprehended the whole of the *Jus Civile*; for it was all either *Scriptum* or *Non Scriptum*, whatever other divisions there might be (*Ulp. Dig.* i. tit. 1 s. 6). *Jus Scriptum* comprehended everything, except that "*quod usus approbavit*." This division of *Jus Scriptum* and *Non Scriptum* does not appear in Gaius. It was borrowed from the Greek writers, and seems to have little or no practical application among the Romans.

§ 9. There is another division of the matter of law which appears among the Roman jurists, viz., the Law of Persons, the Law of Things, which is expressed by the phrase "*jus quod ad res pertinet*;" and the Law of Actions, "*jus quod ad actiones pertinet*" (*Gaius* i. 8).—*Smith Dict. Antiq.*

Jus, (in maxim ignorantia juris haud excusat). L. R. 2 H. L. 150.

JUS ACCRESCENDI.—That right of survivorship which is peculiar to joint ownership, joint rights, and joint liabilities. See **JOINT**.

Jus accrescendi inter mercatores locum non habet, pro beneficio commercii (Co. Litt. 182): The right of survivorship does not exist among merchants, for the benefit of commerce. See **JOINT TENANCY**.

Jus accrescendi præfertur oneribus ac ultimæ voluntati (Co. Litt. 185): The right of survivorship is preferred to encumbrances and to the last will. This maxim has reference to, and forms one of the principal rules affecting joint tenancies.

JUS AD REM.—An inchoate and imperfect right; such as a parson promoted to a living acquires by nomination and institution.

JUS ÆLIANUM.—A body of laws drawn up by Sextus Aelius, and consisting of three parts, wherein were explained respectively: (1) The laws of the Twelve Tables; (2) the interpretation of and decisions upon such laws; and (3) the forms of procedure. In date, it was subsequent to the *Jus Flavianum* (q. v.).—*Brown*.

JUS ÆSNECIÆ.—The right of primogeniture (q. v.)

JUS ALBINATUS.—The *droit d'aubaine*, (q. v.)

JUS ANGLORUM.—The laws and customs of the West Saxons, in the time of the Heptarchy, by which the people were for a long time governed, and which were preferred before all others.—*Wharton*.

JUS AQUÆDUCTUS.—The name of a civil law servitude which gives to the owner of land the right to bring down water through or from the land of another, either from its source or from any other place.—*Bouvier*.

JUS BELLUM DICENDI.—The right of proclaiming war.

JUS CIVILE.—The interpretation of the laws of the Twelve Tables, and now of the whole system of the Roman laws. See **JUS**, §§ 2, 7.

JUS CIVITATUS.—The freedom of the city of Rome. It differs from *Jus Quiritium* (q. v.), which comprehended all the privileges of a free native of Rome. The difference is much the same as between denization and naturalization in English law.

JUS COMMUNE.—The common law.

Jus constitui oportet in his quæ ut plurimum accidunt non quæ ex inopinato (D. 1, 3, 3): Laws ought to be made with a view to those cases which happen most frequently, and not to those which are of rare or accidental occurrence.

JUS CORONÆ.—The right of the crown.

JUS CURIALITATIS ANGLIÆ.—The curtesy of England. *See* CURTESY.

JUS DARE.—To give the law; to make law. This is the province of the legislature, as distinguished from that of the judge, which is to declare the law—*jus dicere* (*q. v.*)

JUS DELIBERANDI.—The right which an heir has in Scotch law, of deliberating for a certain time whether he will represent his predecessor. *See* ANNUS DELIBERANDI.

JUS DEVOLUTUM.—The right of the church of presenting a minister to a vacant parish, in case the patron shall neglect to exercise his right within the time limited by law.

JUS DICERE.—To declare the law. Distinguished from *jus dare* (*q. v.*)

JUS DISPONENDI.—The right of disposing. An expression used either generally to signify the right of alienation, as when we speak of depriving a married woman of the *jus disponendi* over her separate estate (Snell Eq. 291), or specially in the law relating to sales of goods, where it is often a question whether the vendor of goods has the intention of reserving to himself the *jus disponendi*, i. e. of preventing the ownership from passing to the purchaser, notwithstanding that he (the vendor) has parted with the possession of the goods. Such a question becomes of great importance when a vendor has dispatched goods to a purchaser in a distant place, and the latter becomes insolvent before paying for them, because if the vendor has effectually reserved the *jus disponendi* he can reclaim the goods. Benj. Sales 288. *See* APPROPRIATE, § 2; STOPPAGE IN TRANSITU.

JUS DIVIDENDI.—The right of disposing of realty by will.—*Du Cange.*

JUS DUPLICATUM.—*See* DROIT-DROIT.

Jus est ars boni et æqui (D. 1, 1, 1; Bract. 2b): Law is the science of what is good and just.

Jus est norma recti; et quicquid est contra normam recti est injuria (3 Bulstr. 313): Law is a rule of right; and whatever is contrary to the rule of right is an injury.

Jus et fraus nunquam cohabitant: Right and fraud never dwell together.

Jus ex injuria non oritur: A right cannot arise to any one out of his own wrong.

JUS FECIALE.—The law of nations.

JUS FIDUCIARIUM.—A trust.

JUS FLAVIANUM.—A body of laws drawn up by Cneius Flavius, a clerk of Appian

Claudius, from the materials to which he had access. It was a popularization of the laws.

JUS FODIENDI.—A right of digging.

JUS GENTIUM.—*See* JUS, §§ 2-4; LAW OF NATIONS.

JUS GLADII.—The right of the sword; the executory power of the sovereign.

JUS HABENDI.—The right to be put in actual possession of property. *Lew. Trusts* 585.

JUS HABENDI ET RETINENDI.—A right to have and to retain the profits, tithes, and offerings, &c., of a rectory or parsonage.

JUS HÆREDITATIS.—The right of inheritance. *See* DESCENT.

JUS HONORARIUM.—The body of the Roman law, which was made up of edicts of the supreme magistrate, particularly the prætors.

JUS IMAGINIS.—The right of using pictures and statues of ancestors among the Romans. It had some resemblance to the right of bearing a coat-of-arms at the present day.

JUS IMMUNITATIS.—The law of immunity, or exemption from the burden of public office.

JUS IN PERSONAM.—A right which gives its possessor a power to oblige another person to give or procure, to do or not to do, something. *See* IN PERSONAM; RIGHT.

JUS IN RE.—A complete and full right; a real right, or a right to have a thing, to the exclusion of all other men.

JUS IN RE PROPRIA.—The right of enjoyment which is incident to full ownership or property, and is often used to denote the full ownership or property itself. It is distinguished from *jus in re aliend*, which is a mere easement or right in or over the property of another.

Jus jurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur (Grot. l. 2, c. xiii. s. 10): The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense, that the Deity is invoked. *See* OATH.

JUS LATIUM.—In the Roman law, a rule of law applicable to magistrates in Latium. It was either *majus Latium* or *minus Latium*—the *majus Latium* raising to the dignity of Roman citizen not only the magistrate himself but also his wife and children; the *minus Latium* raising to that dignity only the magistrate himself.—*Brown.*

JUS LEGITIMUM.—A legal right. In the civil law, a right which was enforceable in the ordinary course of law.

JUS LIBERORUM.—A privilege granted to such persons in ancient Rome as had three children, by which they were exempted from all troublesome offices — *Wharton*.

JUS MARITI.—

§ 1. The *jus mariti* (or "right of a husband") is that right to the chattels of a woman which, at common law, in the absence of special provisions, her husband acquires on their marriage. Hence, a gift to or settlement on the wife of property to her separate use is said to exclude the *jus mariti*.

§ 2. **Jure mariti.**—If a married woman having personal estate settled to her separate use die without disposing of it, the husband will be entitled, according to English law, *jure mariti*, to so much of it as consists of chattels in possession, that is to say, they vest in him as if they had not been settled on the wife; while to entitle himself to so much of it as consists of choses in action, he must take out letters of administration to his wife's estate. *Snell Eq.* 285.

JUS MERUM.—Pure or mere right.

JUS NATURALE.—See *Jus*, §§ 3, 4.

Jus naturale est quod apud omnes homines eandem habet potentiam (7 Co. 12): Natural right is that which has the same force among all men.

Jus non habenti tute non paretur (Hob. 146): One who has no right cannot be safely obeyed.

Jus non patitur ut idem bis solvatur: Law does not suffer that the same thing be twice paid.

JUS NON SCRIPTUM.—See *Jus*, § 8.

JUS PAPIRIANUM.—The laws of Romulus, Numa, and other kings of Rome, collected by Sextus Papirius, who lived in the time of Tarquin the Proud.

JUS PASCENDI.—The right of grazing.

JUS PATRONATUS.—This phrase, in ecclesiastical law, signifies (1) the right of advocacy (*q. v.*) (*Phillim. Ecc. L.* 329), or more commonly, (2) a proceeding to try the question who is entitled to a right of presentation which is claimed by different persons. It is an inquest of office, which is tried before the bishop, or commissioners appointed by him, by a jury of clerks and laymen. (*Id.* 447.) The result of the trial does not conclude the question, but merely justifies the bishop in admitting the clerk for whose title the verdict is given. *Id.* 451. See *DISTURBANCE*, § 2; *QUARE IMPEDIT*.

JUS PERSONARUM.—Rights of persons. Those rights which, in the civil law, belong to persons as such, or in their different characters and relations; as parents and children, masters and servants, &c.

JUS POSSESSIONIS.—The right of possession.

JUS POSTLIMINII.—The right in virtue of which persons and things taken by an enemy are restored to their former state on their coming again into the power of the nation to which they belonged, persons being re-established in their former rights, and things being restored to the original owner.

JUS PRÆTORIUM.—The discretion of the prætor in the Roman law, as distinguished from the *leges* or standing law.

JUS PRECARIUM.—A precarious or courteous right for which the remedy was only by entreaty or request.

JUS PRESENTATIONIS.—The right of presentation.

JUS PRIVATUM.—The civil or municipal law of Rome.

JUS PROPRIETATIS.—The right of property.

Jus publicum et privatum quod ex naturalibus præceptis aut gentium aut civilibus est collectum; et quod in jure scripto jus appellatur, id in lege Angliæ rectum esse dicitur (Co. Litt. 1858): Public and private law is that which is collected from natural principles, either of nations or in states; and that which in written law is called *jus*, in the law of England is said to be right.

Jus publicum privatorum pactis mutari non potest: A public right cannot be altered by the agreements of private persons.

JUS QUIRITIUM.—The old law of Rome, that was applicable originally to Patricians only, and under the Twelve Tables, to the entire Roman people, was so called, in contradistinction to the *jus prætorium* (*q. v.*) or equity. — *Brown*.

JUS RECUPERANDI, INTRANDI, &c.—A right of recovering and entering land, &c.

JUS RELICTÆ.—The right of a widow in her deceased husband's personalty.

JUS RERUM.—The law of things. The law regulating the rights and powers of persons over things; how property is acquired, enjoyed, and transferred.

Jus respicit æquitatem (Co. Litt. 24): Law has regard to equity.

JUS SCRIPTUM.—See *Jus*, § 8.

Jus superveniens auctori accrescit successor: A right growing to a possessor accrues to the successor.

JUS TERTII.—When a person who is *prima facie* liable to A., on being sued by him sets up as a defence that the money or property claimed does not belong to A., but belongs by a paramount title to B., he is said to set up the *jus tertii* (right of a third person).

§ 2. **Wrongdoer.**—The general rule is, that a wrongdoer cannot set up the *jus tertii*. Therefore, when A. seized goods in the possession of B., and on being sued by B. set up as a defence that B. had no title because the assignment from C., under which he claimed, was fraudulent as against A., and that the goods belonged to A. under a valid assignment from C., it was held that A., being guilty of conversion, and therefore a wrongdoer, could not set up the *jus tertii* against B. *Jeffries v. Great Western Rail. Co.*, 5 El. & B. 802. See *Freshney v. Carrick*; 1 Hurlst. & N. 653.

§ 3. **Agent.**—So an agent cannot refuse to account to his principal, or otherwise dispute his title, by setting up the *jus tertii*, unless he does so under the authority of the third person. *Russ. Merc. Ag.* 34, 224.

Jus testamentorum pertinet ordinario (4 H. 7, 13b): The right of testaments belongs to the ordinary.

Jus triplex est: proprietatis, possessionis, et possibilitatis: Right is threefold: of property, of possession, and of possibility.

JUS VENANDI ET PISCANDI.—The right of hunting and fishing.

Jus vendit quod usus approbavit (Ellesm. Postn. 35): The law dispenses what use has approved.

Jusjurandum inter alios factum nec nocere nec prodesse debet (4 Inst 279): An oath made between others ought neither to hurt nor profit.

JUST, (in a statute). L. R. 5 H. L. 636.

JUST AND EQUAL PROPORTIONS, (in a deed of assignment). 7 Serg. & R. (Pa.) 514.

JUST AND EQUITABLE, (in a statute). 23 Hun (N. Y.) 58.

JUST AND FAIR, (in a statute). 59 How. (N. Y.) Pr. 136, 138, 145, 148.

JUST AND REASONABLE COMPENSATION, (what is). 1 Den. (N. Y.) 508.

JUST AND REASONABLE TERMS, (in practice act). 1 Bradw. (Ill.) 391.

JUST CAUSE, (synonymous with "legal," "sufficient," and "reasonable cause"). 2 Burr. 732.

JUST COMPENSATION, (what is). 18 Wend. (N. Y.) 34.

— (for lands taken for public use). 13 Vt. (N. J.) 621.

JUST DEBTS, (what are not). 9 Mass. 62.

— (in a will). 9 N. Y. 398, 400; 1 Binn. (Pa.) 209.

JUSTA.—A certain measure of liquor, being as much as was sufficient to drink at once. *Mon. Ang. t. 1*, 149.

JUSTICE.—The word *justitia*, in the sense of judge, occurs in our oldest books; otherwise one might suppose "justice" to be derived from *justiciarius*. *Stubb's Charters*, 74; *Co. Litt.* 71b; *Britt.* 8.

§ 1. The virtue by which we give to every man what is his due, opposed to injury or wrong. It is either *distributive*, belonging to magistrates, or *commutative*, respecting common transactions among men.

§ 2. The judges of certain courts are called "justices." Thus, the judges of the Supreme Court of the United States, and of many of the State courts of last resort are called "justices," and in England, before the Judicature Act, the judges of the Queen's Bench and Common Pleas were called "justices" of those courts, the principal judge of each court being called respectively the "lord chief justice of England," and the "lord chief justice of the Common Pleas." The latter title has been abolished. (See **HIGH COURT OF JUSTICE**.) With the exception of the lord chancellor, the lord chief justice of the Queen's Bench Division (*q. v.*), and the master of the rolls, (*Jud. Act*, 1873, §§ 5, 32.) all the judges of the High Court appointed since the act came into operation are called "justices of the High Court." *Jud. Act*, 1877, § 5. See **BARON**.

As to the lords justices of appeal, and the justices of the peace, see those titles. As to justices of assize, see **ASSIZE**, § 2; also, **EYRE**.

JUSTICE, (in act relative to appeals). 2 Gr. (N. J.) 26, 31.

— (in a statute). 7 Cow. (N. Y.) 402, 408.

JUSTICE AYRES.—The circuits through the kingdom made for the distribution of justice in Scotland.—*Bell Dict.*

JUSTICE OF THE PEACE, (general powers of). 2 Harr. (N. J.) 358, 366.

JUSTICE-SEAT.—The principal court of the forest.

JUSTICEMENTS.—All things appertaining to justice.

JUSTICER.—An administrator of justice.

JUSTICES' COURTS.—Inferior tribunals, with limited jurisdiction, both civil and criminal. There are courts so called in many of the States. See **JUSTICES OF THE PEACE**.

JUSTICES IN EYRE.—These justices, so called from the old French word *eyre*, i. e. a journey, were those who in ancient times were sent by commission into various counties to hear more especially such causes as were termed pleas of the crown. They differed from justices of *oyer* and *terminer*, inasmuch as the latter were sent to one place, and for the purpose of trying only a limited number of special causes; whereas the justices in eyre were sent through the various counties with a more indefinite and general commission; in some respects they resembled our present justices of assize, although their authority and manner of proceeding differed much from them. See **EYRE**.

JUSTICES OF APPEAL.—The title given to the ordinary judges of the English Court of Appeal. The first of such ordinary judges are the two former lords justices of Appeal in Chancery, (who, with the lord chancellor constituted the appellate part of the High Court of Chancery,) and one other judge appointed by the crown by letters-patent. Jud. Act, 1875, § 4. See **APPEAL**.

JUSTICES OF ASSIZE.—These justices, or, as they are sometimes called, justices of *nisi prius*, are judges of the superior English courts, who go circuit into the various counties of England and Wales for the purpose of disposing of such causes as are ready for trial at the assizes. See **ASSIZE**.

JUSTICES OF GAOL DELIVERY.—Those justices who are sent with a commission to hear and determine all causes appertaining to persons, who, for any offence, have been cast into gaol. Part of their authority was to punish those who let to mainprise those prisoners who were not bailable by law, and they seem formerly to have been sent into the country upon this exclusive occasion, but afterwards had the same authority given them as the justices of assize.—*Brown*.

JUSTICES OF LABORERS.—Justices who were formerly appointed to try questions relating to the wages of laboring men, who sometimes would not work without having wages granted them, beyond the amount prescribed by the Statute of Laborers, 23 Edw. III.

JUSTICES OF NISI PRIUS.—See **JUSTICES OF ASSIZE**.

JUSTICES OF OYER AND TERMINER.—Certain persons appointed by the king's commission, among whom were usually two judges of the Courts at Westminster, and who went twice in every year to every county of the kingdom (except London and Middlesex), and at what was usually called the "assizes," heard and determined all treasons, felonies and misdemeanors.

JUSTICES OF THE BENCH.—The justices of the Court of Common Bench or Common Pleas.

JUSTICES OF THE FOREST.—Officers who had jurisdiction over all offences

committed within the forest against vert or venison. The court wherein these justices sat and determined such causes was called the justice seat of the forest. They were also sometimes called the justices in eyre of the forest. See **VERT AND VENISON**.

JUSTICES OF THE HUNDRED.—Hundredors; lords of the hundreds; they who had the jurisdiction of hundreds and held the Hundred Courts.

JUSTICES OF THE JEWS.—Justices appointed by Richard I. to carry into effect the laws and orders which he had made for regulating the money contracts of the Jews.

JUSTICES OF THE PAVILION.—Judges of a piedpoudre court, of a most transcendent jurisdiction anciently authorized by the bishop of Winchester, at a fair held on St. Giles' Hills near that city.—*Cowell; Blount*.

JUSTICES OF THE PEACE.—

§ 1. **In English law.**—Judges of record appointed by the crown to be justices within a certain district (e. g. a county or borough) for the conservation of the peace, and for the execution of divers things, comprehended within their commission and within divers statutes, committed to their charge. Stone Just. 2, citing Dalton.

§ 2. **Ministerial duties.**—Their authority is either ministerial or judicial. They are said to act ministerially in cases of felony or misdemeanor, where they merely initiate the proceedings by issuing a warrant of apprehension, taking the depositions, and committing for trial; and also in appointing parish officers and allowing parish rates, &c.

§ 3. **Judicial.**—They act judicially in quarter sessions (*q. v.*), and in all cases where they have summary jurisdiction, whether criminal, as in cases of common assaults, drunkenness, &c.; or civil, as where they have to adjudicate between master and servant, or landlord and tenant, and in affiliation cases, &c. (*Id.* 4, 240.) When quarter sessions are held in a borough the recorder is the sole judge. See **PETTY SESSIONS**; **QUARTER SESSIONS**.

§ 4. **Breaches of the Peace.**—By virtue of their commission, justices of the peace have jurisdiction in all matters relating to the preservation of the public peace; and in case of an actual or apprehended breach of the peace within their own view, they may commit the offender without warrant or information. Most commonly, however, their jurisdiction is exercised by binding over persons to keep the peace. 4 Steph. Com. 292. As to their qualifications, see Pritch. Quar. Sess. 35. See **BREACH OF THE PEACE**, § 3.

§ 5. **Admiralty.**—Justices now have a limited jurisdiction in admiralty matters, namely, in cases of damage, salvage, and wages (*q. v.*) where the amount in question does not exceed a certain sum. Rosc. Adm. Pr. 76; Stat. 10 and 11 Vict. c. 27; Merch. Shipp. Act, 1854, § 460; M. S. Am. Act, 1862, § 49 *et seq.*

§ 6. It will be remembered that the Queen's Bench Division of the High Court on its crown

side takes cognizance of breaches of the peace, and that judges of assize sit under a commission of the peace, as well as under commissions of *nisi prius*, &c. (See ASSIZE, § 3.) Consequently the judges of these courts are justices of the peace. As to licensing justices, see LICENSE; and as to visiting justices, see PRISON. See, also, COMMISSION OF THE PEACE; RECORDER.

§ 7. In American law.—Inferior magistrates, appointed in some States, and elected in others, who are invested with civil jurisdiction in petty suits, and power to prevent breaches of the peace, issue warrants, commit offenders for trial, etc. Their functions and powers are, for the most part, very similar to those of the English justices described *supra* §§ 2-4.

JUSTICES OF TRIAL-BASTON.—A kind of justices in eyre appointed by King Edward I. during his absence in the Scotch and French wars. They possessed great powers adapted to the emergency, and which they exercised in a summary manner.—*Cowell*.

JUSTICESHIP.—Rank or office of a justice.

JUSTICIABLE.—Proper to be examined in courts of justice.

JUSTICIAR.—An officer instituted by William the Conqueror; a lord chief justice.

Justiciarii, tanquam justi in concreto, justiciarii de banco dicti, nunquam judices de banco (Co. Litt. 71b): Justices, from *justi in concreto*, called "justices of the bench," never "judges of the bench."

JUSTICIATUS.—Judicature; prerogative.

JUSTICIES—A writ directed to the sheriff in some special cases by virtue of which he might hold plea of debt in his county court for a large sum; whereas, by his ordinary power, he was limited to sums under 40s.—(*F. N. B.* 117; 3 Bl. Com. 36.) As the sheriff could not, by this process, or the judgment to be obtained thereupon, arrest the defendant's body, but only take his goods; and as the cause might be removed at the defendant's pleasure into the superior courts, this process fell into desuetude.

JUSTIFIABLE—JUSTIFICATION—JUSTIFY.—

§ 1. **Torts and crimes.**—In the law of torts and crimes, justification is where the defendant in an action or prosecution shows that the act complained of was justifiable, *i. e.* lawful. Thus, a derogatory statement is not defamatory if it is true; an assault or battery is lawful if committed in self-defence, or in defence of one's prop-

erty, or for the purpose of proper correction or discipline, &c. (Underh. Torts 121.) A defendant who sets up such a defence is said to justify. It is obvious that such a defence is inadmissible in a prosecution for an obscene, blasphemous, or seditious libel; and even in the case of a prosecution for a defamatory libel, it is only available where it is for the public benefit that the matter complained of should be published. Shortt Copyr. 528, 558; 6 and 7 Vict. c. 96, § 6; 3 Russ. Cr. & M. 179; Steph. Cr. Dig. 189.

§ 2. **Bail or sureties.**—In procedure, bail or sureties for the defendant in an action are said to justify when they satisfy the plaintiff or the court that they are sufficient, *i. e.* that they will be able to perform their obligation if the plaintiff is successful. When bail or security is given, the sureties usually make affidavits of justification, stating that they are housekeepers or freeholders, and that they are worth double the amount claimed in the action. If, however, bail are excepted to, and in certain other cases, they have to justify or attend before a judge at chambers and be examined on oath as to their sufficiency. Sm. Ac. (11 edit.) 235; Chit. Gen. Pr. 727. See BAIL; EXCEPT.

JUSTIFIABLE CAUSE, (not synonymous with "probable cause"). 3 Call (Va.) 446, 452.

JUSTIFIABLE HOMICIDE.—The killing of a human creature without incurring any legal guilt. It is of various kinds:

§ 1. The due execution of public justice, in putting a malefactor to death who has forfeited his life by the laws of his country.

§ 2. It may be committed for the advancement of public justice, as in the following instances: (1) Where an officer or his assistant in the due execution of his office, either in a criminal or civil case, arrests, or attempts to arrest, a person who resists, and who is killed in the struggle; (2) in case of a riot or rebellious assembly, officers endeavoring to disperse the mob are justified in killing them, both at common law and by the Riot Act, 1 Geo. I. c. 5; (3) where the prisoners in a gaol assault the gaoler or officer, and he in his defence kills any of them, it is justifiable, for the sake of preventing an escape; (4)

where an officer or his assistant, in the due execution of his office, arrests, or attempts to arrest, a person for felony, or a dangerous wound given, and he having notice thereof flies, and is killed by such officer or assistant in pursuit; (5) where, upon such offence as last described, a private person, in whose sight it has been committed, arrests, or endeavors to arrest, the offender, and kills him in resistance, or flight, under similar circumstances.

§ 3. Where committed for the prevention of any forcible or atrocious crime, but not if the crime is unaccompanied by force.

§ 4. When two persons, being shipwrecked, get on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned. This is justifiable upon the great universal principle of self preservation. 4 Steph. Com. (7 edit.) 48. See HOMICIDE, § 4.

JUSTIFICATION.—See JUSTIFIABLE.

JUSTIFICATION, (notice of, must be as definite as a plea). 24 Wend. (N. Y.) 354.

JUSTIFICATION OR EXCUSE, (in a statute). 14 Mass. 273.

JUSTIFICATORS.—A kind of compurgators, (*q. v.*) or those who by oath justified the innocence or oaths of others, as in the case of wager of law.

JUSTIFYING BAIL.—Proving the sufficiency of bail or sureties in point of property, &c. See BAIL.

JUSTINIANIST.—A civilian; one who studies the civil law.

JUSTITIA.—Justice. A jurisdiction, or the office of a judge.

Justitia debet esse libera, quia nihil iniquius venalia justitia; plena, quia

justitia non debet claudicare; et celeris, quia dilatio est quædam negatio (2 Inst. 56): Justice ought to be unbought, because nothing is more hateful than venal justice; full, for justice ought not to halt and quick, for delay is a kind of denial.

Justitia est duplex: viz., severe puniens et vere præveniens (3 Inst. Epil.): Justice is double; punishing severely, and truly preventing.

Justitia est virtus excellens et Altissimo complacens (4 Inst. 58): Justice is excellent virtue and pleasing to the Most High.

Justitia firmatur solium (3 Inst. 140): By justice the throne is established.

Justitia nemini neganda est (Jenk. Cent. 178): Justice is to be denied to none.

Justitia non est neganda, non differenda (Jenk. Cent. 93): Justice is neither to be denied nor delayed.

Justitia non novit patrem nec matrem, solam veritatem spectat justitia (1 Bulst. 199): Justice neither knows father nor mother; justice regards truth alone.

JUSTITIA PIEPOUDROUS.—Speedy justice. Bract. 333 b.

JUSTITIUM.—A ceasing from the prosecution of law, and exercising justice in places judicial.—*Cowell*.

JUSTITIUM FACERE.—To hold a plea of anything.

JUSTLY DUE, (in a statute). 128 Mass. 102, 277; 1 Harr. (N. J.) 143.

JUSTLY MEASURE, (in a statute). 3 East 206.

JUSTS, or JOUSTS.—Exercises between martial men and persons of honor, with spears, on horseback; different from *tournaments*, which were military exercises between many men in troops. 24 Hen. VIII. c. 13.

JUXTA FORMAM STATUTI.—According to the form of the statute.

K.

KAIA.—In old records, a key, quay, or wharf.

KAIAGE, or KAIAGIUM.—A wharfage-due.

KAIN.—Poultry, &c., renderable by a vassal to his superior.—*Bell Dict.*

KALENDÆ.—Rural chapters, or conven-

tions of the rural deans and parochial clergy, which were formerly held on the calends of every month; hence the name. Kenn. Par. Ant. 604.

KALENDAR.—See CALENDAR.

KARLE.—A churle.—*Domesd.*

KARRATA FCENI.—A cart-load of hay

KAY.—A quay, or key.

KEELAGE.—A privilege to demand money for the bottom of ships resting in a port or harbor; also the money so paid.—*Termes de la Ley*.

KEELHALE, KEELHAUL, or KEELRAKE.—To drag a person under the keel of a ship by means of ropes from the yard-arms; a punishment formerly practiced in the navy.—*Encycl. Lond.*

KEELS.—Vessels for the carriage of coals.—*Jacob*.

KEEP.—A strong tower or hold in the middle of any castle or fortification, wherein the besieged make their last efforts of defence was formerly, in England, called a "keep;" and the inner pile within the castle of Dover, erected by King Henry II. about the year 1153, was termed the "king's keep;" so at Windsor, &c. It seems to be something of the nature with what is called abroad a "citadel."—*Jacob*.

KEEP, (defined). 105 Mass. 467.

KEEP A HOUSE, (implies more than to live in one). 31 Conn. 574.

KEEP AND CONTINUE, (in a declaration). 8 Dowl. & Ry. 62.

KEEP HOUSE, (in English bankruptcy act). 6 Bing. 363.

KEEP IN GOOD REPAIR, (condition to, when broken). 13 Gray (Mass.) 103.

KEEP IN PROPER REPAIR, (in a covenant). 1 Barn. & Ald. 584.

KEEP IN REPAIR, (in a statute). 66 Me. 154.

KEEP OPEN, (in a city ordinance). 16 Mich. 472.

KEEPER, (defined). 122 Mass. 541, 543.

—— (in a statute). 3 Allen (Mass.) 101.

—— (of gaming house—of animals). 67 Ill. 587; 63 Me. 468.

KEEPER OF A DOG, (in a statute). 52 N. H. 368.

KEEPER OF THE FOREST.—The chief warden of the forest, who has the superintendence over all the other officers, &c. *Manw.* p. i, p. 156.

KEEPER OF THE GREAT SEAL, LORD.—A judicial officer who used to be appointed in lieu of the lord chancellor. 5 Eliz. c. 18. *See* LORD KEEPER.

KEEPER OF THE PRIVY SEAL.—This officer is now called the "lord privy seal," and through his hands all charters, &c., pass, before they come to the great seal. The office of lord privy seal is always held by a cabinet minister. *See* PRIVY SEAL.

KEEPER OF THE TOUCH.—The master of the assay in the English mint. 12 Hen. VI. c. 14.

KEEPERS OF A FERRY, (in a statute). 8 Dana (Ky.) 159.

KEEPING, (equivalent to "maintenance"). 18 Kan. 188, 191.

KEEPING A BAWDY-HOUSE, (indictment for). 2 Ld. Raym. 1197; 10 Mod. 33.

KEEPING A HOUSE, (equivalent to "occupying it"). 5 Ill. 168.

KEEPING HOUSE.—This is an act of bankruptcy (*q. v.*) It is confined to traders, and takes place when a debtor denies himself to a creditor who has called for payment, or withdraws into a secret part of the house, or refrains from going to his house of business, or confines himself to the house during the day, for the purpose of avoiding and thus delaying his creditors. *Robs. Bankr.* 107 *et seq.* *See* ACT OF BANKRUPTCY, § 2.

KEEPING OF A COMMON GAMING TABLE, (what is not). 4 Cranch (U. S.) C. C. 659.

KEEPING OPEN, (in a statute). 11 Gray (Mass.) 308.

KEEPING PROPER BOOKS OF ACCOUNT, (in bankrupt act, defined). 16 Bankr. Reg. 152.

KEEPING UP, (applied to a dam). 14 Johns. (N. Y.) 427.

KENILWORTH EDICT.—An edict or award between Henry III. and those who had been in arms against him, so called because made at Kenilworth Castle in Warwickshire, anno 51 Henry III., A. D. 1266. It contained a composition of those who had forfeited their estates in that rebellion, which composition was five years' rent of the estates forfeited. *Hale C. L.* 10, n. (d).

KENNING TO A TERCE.—In the Scotch law, the act of a sheriff in ascertaining the just proportion of the husband's lands which belong to the widow in right of her *terce*, or third.—*Bell Dict.*

KENTLAGE.—A permanent ballast, consisting usually of pigs of iron, cast in a particular form, or other weighty material, which, on account of its superior cleanliness, and the small space occupied by it, is frequently preferred to ordinary ballast. *Abb. Sh.* 5.

KENTREEF.—The division of a county; a hundred in Wales. *See* CANTRED.

KENTUCKY CURRENCY, (defined). 3 Mon. (Ky.) 149; 4 *Id.* 170.

KEPT IN OPERATION, (in an agreement concerning a railroad). 2 Allen (Mass.) 417, 423.

KEPT IN STOCK, (in a will). 6 Mass. 37.

KEPT OR USED, (in a statute). 65 Mo. 11.

KERHERE.—A customary cart-way; also a commutation for a customary carriage-duty.—*Cowell*.

KERNELLATUS.—Fortified or embattled. *Co. Litt.* 5a.

KERNES.—Idlers; vagabonds.

KEYAGE.—A toll paid for loading and unloading merchandise at a key or wharf.

KEYS OF COURT.—*See* CLAVES CURIE.

KEYUS.—A guardian, warden, or keeper. Mon. Angl. tom. 2, p. 71.

KIDDER.—An engrosser of corn to enhance its price.

KIDDLE, KIDEL, or KEDEL.—A dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fish.—2 Inst. 38.

KIDNAPPING.—The forcible abduction or stealing away of a man, woman, or child, from their own country, and sending them into another. It is an offence punishable at the common law by fine and imprisonment. (4 Bl. Com. 219.) In American law, this word is confined in meaning to the abduction or stealing of children, with or without an intent to send them out of the country. According to Bishop, the term includes false imprisonment. 2 Bish. Cr. L. § 671. *See* ABDUCTION; INVEIGLING.

KIDNAPPING, (defined). 20 Ill. 315.
—— (what is not). 8 N. H. 550, 568.

KILDERKIN.—A measure of eighteen gallons.

KILKETH.—An ancient servile payment made by tenants in husbandry.—*Cowell*.

KILL.—(1) An Irish word, signifying a church or cemetery, which is used as a prefix to the names of many places in Ireland.—*Encycl. Lond.* (2) A Dutch word, signifying the channel or bed of a river. (3) In New York, a small stream or creek.

KILL, (as meaning a stream of water, defined). 1 N. Y. 96, 107.

KILLAGIUM.—Keelage (*q. v.*)

KILLYTH-STALLION.—A custom by which lords of manors were bound to provide a stallion for the use of their tenants' mares.—*Spel. Gloss.*

KIN, or KINDRED.—*SAXON: cynren.*

Relation either of consanguinity or affinity.

§ 1. There are two degrees of either kindred; the one in the lineal or direct

line ascending or descending, and the other in the collateral or indirect line.

§ 2. The right of representation of kindred for the purposes of distribution of personalty, in the descending line, reaches beyond the great-grandchildren of the same parents, but in the collateral line it is not allowed to reach beyond brothers' and sisters' children. The English law agrees in its computation with the civil and ecclesiastical laws, as to the right line, and with the civil as to collaterals, in computing who are entitled to administration and distribution of the personal property of intestates.

§ 3. There are several rules to know the degrees of kindred; in the ascending line, take the son and add the father, and it is one degree ascending; then add the grandfather, and it is a second degree; a person added to a person in the line of consanguinity making a degree; if there are many persons, take away one, and you have the number of degrees, as if there be four persons, it is the third degree; if five, the fourth, &c.; so that the father, son and grandchild, in the descending line, though three persons, make but two degrees. To know in what degree of kindred the sons of two brothers stand, begin with the grandfather, and descend to one brother, the father of one of the sons, which is one degree; then descend to his son, the ancestor's grandson, which is a second degree; and then descend again from the grandfather to the other brother, father of the other of the sons, which is one degree, and descend to his son, &c., which is a second degree; thus, reckoning the person from whom the computation is made, it appears there are two degrees and that the sons of two brothers are distant from each other two degrees; for in what degree either of them is distant from the common stock, the person from whom the computation is made, they are distant between themselves, in the same degree; and in every line the person must be reckoned from whom the computation is made. If the kindred are not equally distant from the common stock, then in what degree the most remote is distant, in the same degree they are distant between themselves, and so

the line of the most remote makes the degree. Wood Com. L. 48.

KIN-BOTE.—In old Saxon law, compensation for the murder of a kinsman.

KIN, NEXT OF, (defined). 3 Bro. Ch. 355; Reeve Dom. Rel. 18.

—— (in a statute). 1 Black (U. S.) 459.

—— (in a will). 12 Ves. 433.

KINDRED.—*See* KIN.

KINDRED, (as equivalent to "consanguinity"). 15 Ves. 92, 107.

—— (in a statute). 38 Me. 153; 11 Cush. (Mass.) 24.

KINDRED OF THE HALF BLOOD, (in a statute). 116 Mass. 562.

KING.—*See* CIVIL LIST; DEBT, § 7; DEMESNE, § 5; DEMISE; PARLIAMENT; PREROGATIVE.

KING-CRAFT.—The art of governing.

KING-GELD.—A royal aid; an escuage (*q. v.*)

KING'S BENCH.—The name given to the Queen's Bench (*q. v.*) when a king is on the throne of England.

KING'S CHAMBERS.—Those portions of the seas, adjacent to the coasts of Great Britain, which are inclosed within headlands so as to be cut off from the open sea by imaginary straight lines drawn from one promontory to another. They appear to have always formed part of the territorial waters of the crown. Couls. & F. Waters 12, n. (3). *See* HIGH SEAS; TERRITORIAL WATERS.

KING'S COUNSEL.—*See* QUEEN'S COUNSEL.

KING'S HOUSEHOLD.—*See* CIVIL LIST.

KING'S SILVER.—The money which was paid to the king, in the Court of Common Pleas, for a license granted to a man to levy a fine of lands, tenements or hereditaments, to another person; and this must have been compounded, according to the value of the land, in the alienation office, before the fine would have passed. 2 Inst. 511. *See* FINE.

KING'S WIDOW.—A widow of the king's tenant-in-chief, who was obliged to take oath in chancery that she would not marry without the king's leave.

KINGDOM.—The territories subject to a monarch, either king or queen.

KINGS-AT-ARMS.—The principal herald of England was of old designated king of the heralds, a title which seems to have been

exchanged for king-at-arms about the reign of Henry IV. The kings-at-arms at present existing in England are three: Garter, Clarenceux, and Norroy, besides Bath, who is not a member of the college. Scotland is placed under an officer called Lyon King-at-Arms, and Ireland is the province of one named Ulster.—*Wharton.*

KINSBOTE.—*See* KIN-BOTE.

KINSFOLK.—Relations; those who are of the same family.

KINSMAN.—A man of the same race or family.

KINSMAN, (in a will). 2 P. Wms. 324.

KINSMEN AND KINSWOMEN, (in a will). 17 Ves. 371–373.

KINSWOMAN.—A female relation.

KINTAL, or KINTLE.—A hundred pounds in weight. *See* QUINTAL.

KINTLIDGE.—A ship's ballast. *See* KENTLAGE.

KIPPER-TIME.—The space of time between the 3d of May and the Epiphany, in which fishing for salmon in the Thames, between Gravesend and Henley-on-Thames, was forbidden. Rot. Parl. 50 Edw. III.

KIRBY'S QUEST.—An ancient record remaining with the remembrancer of the Exchequer, so called from its being the inquest of John de Kirby, treasurer of King Edward I.—*Blount; Cowell.*

KIRK.—A church.

KIRK-NOTE, or KIRK-MOTE.—A meeting of parishioners on church affairs.

KIRK-OFFICER.—The beadle of a church in Scotland.

KIRK-SESSION.—A parochial church court in Scotland, consisting of the ministers and elders of each parish.

KLEPTOMANIA.—Insanity in the form of an irresistible propensity to steal.

KLEPTOMANIA, (defined). 10 Tex. App. 524.

KNAVE.—An old Saxon word, which had at first a sense of simplicity and innocence, for it signified a boy, *i. e.* a boy, distinguished from a girl, in several old writers; afterwards it was taken for a servant boy, and at length for any servant man; also it was applied to a minister or officer that bore the weapon or shield of his superior. And it was sometimes of old made use of as a titular addition. The word is now perverted to the hardest meaning, *viz.* a false and deceitful man.—*Jacob.*

KNAVE, (imports dishonesty). 5 Pick. (Mass.) 244.

KNAVESHIP.—A portion of grain, given to a mill-servant from tenants who were bound to grind their grain at such mill. See **THIRLAGE**.

KNIGHT.—

§ 1. The dignity of knighthood ordinarily denotes that of a knight bachelor, which is the lowest title of dignity in England. (See **DIGNITY**.) There are other kinds of knights, such as knights of the garter and of the bath, who are of higher degree. 2 Steph. Com. 612.

§ 2. "Knights of the shire" is the technical name for those members of parliament who represent the counties, as opposed to the citizens and burgesses, or borough members, who represent the towns. 1 *Id.* 128.

KNIGHT'S FEE.—See **FEE**, § 6.

KNIGHT'S SERVICE.—

§ 1. Tenure by knight's service was where a man held land of another person or of the crown by military service, of which the principal varieties were escuage, grand serjeanty, castleward and cornage (*q. v.*)

§ 2. Knight's service had five incidents, namely, aids, relief, wardship, marriage and escheat; the king's tenants *in capite ut de coronâ* were further liable to *primer seisin* and fines for alienation. (Litt. §§ 95, 103 *et seq.*; 2 Bl. Com. 53. See the various titles; also, **FEALTY**; **HOMAGE**; **OUSTERLEMAIN**; **SERVICE**; **TENURE**.) Tenure by knight's service was converted into common socage by Stat. 12 Car. II. c. 24.

KNIGHTENCOURT.—A court which used to be held twice a year by the Bishop of Hereford.

KNIGHTENGUILD.—An ancient guild or society formed by King Edgar.

KNIGHTHOOD.—The character or dignity of a knight. This institution gave rise to three others, each of which is only a deviation from itself: (1) The primitive objects of chivalry induced men to enter into intimate associations, whence sprung the several orders of knighthood. From these, by the degeneracy usually befalling all establishments, are derived the orders still subsisting in modern Europe. (2) The primitive dignity of chivalry gave birth to that species of knighthood as at present conferred. The two species here mentioned, however, are severally distinguished by historians as "regular" and "honorary;" of these the first comprehend such as still adhere to their constitutions, as in requiring vows of celibacy, &c., and the second, those which are merely titular. The Teutonic order is an example of the former; the order of the garter of the latter. (3) The union of chivalry with the feudal system, and the decay of both, gave rise to knight-service and the compulsion of landowners to become knights or pay a fine. By 16 Car. I. c. 20, no man can be compelled to take the order

of knighthood. See Sir N. H. Nicholas' *History of the Orders of Knighthood of the British Empire*.—*Wharton*.

KNIGHT-MARSHAL.—An officer in the royal household who has jurisdiction and cognizance of offences committed within the household and verge, and of all contracts made therein, a member of the household being one of the parties.

KNIGHTS BACHELORS.—The most ancient though lowest order of knighthood. 1 Bl. Com. 404. See **BAS-CHEVALIERS**.

KNIGHTS BANNERET.—Those created by the sovereign in person on the field of battle. They rank, generally, after knights of the garter. 1 Bl. Com. 403.

KNIGHTS OF ST. MICHAEL AND ST. GEORGE.—An order instituted in 1818.

KNIGHTS OF ST. PATRICK.—Instituted in Ireland by George III., A. D. 1763. They have no rank in England.

KNIGHTS OF THE BATH.—An order instituted by Henry IV., and revived by George I. They are so called from the ceremony formerly observed of bathing the night before their creation. Dugd. Antiq. of Warw. 531.

KNIGHTS OF THE CHAMBER.—Those created in the sovereign's chamber in time of peace, not in the field. 2 Inst. 666.

KNIGHTS OF THE GARTER.—This order, otherwise called "Knights of the Order of St. George," was founded by Richard I., and improved by Edward III., A. D. 1344. They formed the highest order of knights.

KNIGHTS OF THE POST.—Hireling witnesses.

KNIGHTS OF THE SHIRE.—See **KNIGHT**, § 2.

KNIGHTS OF THE THISTLE.—This order is said to have been instituted by Achaius, king of Scotland, A. D. 819. The better opinion, however, is, that it was instituted by James V. in 1534, was revived by James VII. (James II. of England) in 1687, and re-established by Queen Anne in 1703. (See Nicholas' *History of the Orders of Knighthood of the British Empire*.) They have no rank in England.—*Wharton*.

KNOCKED DOWN, (synonymous with "struck off"). 7 Hill (N. Y.) 431, 439.

KNOT.—In nautical parlance, a division of the log-line, which answers to half a minute as a mile does to an hour—the one hundredth and twentieth part of a mile. So a ship going eight miles in the hour, is said to go eight knots.

KNOW-MEN, or JUST-FAST-MEN.—The Lollards in England.

KNOWINGLY, (in an indictment). 12 Metc. (Mass.) 448; 8 T. R. 536; 1 Chit. Cr. L. 174.

——— (in a statute). 22 Int. Rev. Rec. 138; 4 Lans. (N. Y.) 17.

KNOWINGLY AND WILFULLY, (in internal revenue act). 3 Pittsb. (Pa.) 155.

KNOWINGLY SELL, (in a declaration). 12 Cush. (Mass.) 499.

KNOWLEDGE, (defined). 4 Sawy. (U. S.) 292.

——— (distinguished from "belief"). 9 Gray (Mass.) 271, 274.

——— (in the code). 11 Heisk. (Tenn.) 417.

——— (in a special warranty). 1 Hill (S. C.) 383.

KNOWLEDGE, ACTUAL, (distinguished from "constructive knowledge"). 17 Bankr. Reg. 158.

KNOWN, (in a statute). 8 Allen (Mass.) 35, 38.

KNOWN OR USED, (of an invention, in a statute). 1 Baldw. (U. S.) 309.

KNOWN VIOLATION OF ANY LAW, (in life policy). 45 N. Y. 422; 6 Am. Rep. 115.

KSAR.—A czar.—*Milton*.

KYMORTHIA.—A waster, rhymer, minstrel, or other vagabond who makes assemblies and collections. Barr. Stat. 360.

KYST, KYSTA, or KYSTE.—A chest or coffin.

KYTH.—Kin or kindred.